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IN THE

# Supreme Court of the United States

CSX TRANSPORTATION, INC.,

*Petitioner,*

v.

STATE BOARD OF EQUALIZATION of the State of Georgia; Jerry Jackson, as Commissioner of Revenue of the State of Georgia; Russell W. Hinton, as State Auditor of the State of Georgia; and Ray J. Crawford, as Director of the Georgia State Properties Commission,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Whether, under the federal statute prohibiting state tax discrimination against railroads, 49 U.S.C. § 11501(b)(1), a federal district court determining the "true market value" of railroad property must accept the valuation method chosen by the State.

## PARTIES TO THE PROCEEDINGS

Pursuant to Supreme Court Rule 14.1, petitioner states that all parties to the proceedings in the court whose judgment is sought to be reviewed are listed in the caption.

## RULE 29.6 STATEMENT

CSX Transportation, Inc. has a parent company, CSX Corporation, which is publicly traded. No other publicly held company owns more than 10% of petitioner's stock.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner CSX Transportation, Inc. ("CSXT") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

## JUDGMENT FOR WHICH REVIEW IS SOUGHT

The opinion of the Eleventh Circuit is published at 472 F.3d 1281 (11th Cir. 2006), and is reproduced in the Appendix to this Petition ("Pet. App.") at 1a-23a. Its order denying rehearing is unpublished and is reproduced at Pet. App. 73a. The opinion of the United States District Court for the Northern District of Georgia is published at 448 F. Supp. 2d 1330 (N.D. Ga. 2005), and is reproduced at Pet. App. 24a-72a.

## JURISDICTION

The judgment of the Eleventh Circuit was entered on December 19, 2006. Pet. App. 1a. The Eleventh Circuit denied rehearing on February 12, 2007. Pet. App. 73a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

## STATUTORY PROVISION INVOLVED

Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("4-R Act" or "the Act"), 49 U.S.C. § 11501 (2002), is reproduced at Pet. App. 75a-77a.[1]

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[1] There are some differences in language between Section 306 as originally enacted in § 306 of Pub. L. No. 94-210, 90 Stat. 31, 54-55 (1976), and as subsequently codified at 49 U.S.C. § 11503 (which was later redesignated as 49 U.S.C. § 11501). The recodification, however, was not intended to effect any substantive change. *Burlington N. R.R.* v. *Okla. Tax Comm'n*, 481 U.S. 454, 457 n.1 (1987). Section 11501 has not changed since 2002, the year in which the dispute arose.

## STATEMENT OF THE CASE

The opening sentence of the opinion below succinctly states the reasons why this Court should grant certiorari: "This appeal presents a question about state taxation of railroad properties that was expressly left open by the Supreme Court of the United States, has since divided the federal appellate courts, and involves the traditional balance of federal and state power." Pet. App. 1a. This Court should grant review to resolve the acknowledged 2-2 split among the circuits on whether, under a federal statute prohibiting discriminatory state taxes, railroads are permitted to prove the true market value of their property by appraisal methods different from those selected by the State.

Congress enacted Section 306 of the 4-R Act to prohibit, and to provide a federal remedy against, discriminatory state taxation of interstate railroads—a widespread and long-standing practice that Congress found seriously weakened the Nation's railroads and "unreasonably burden[ed] and discriminate[d] against interstate commerce." 49 U.S.C. § 11501(b). Eleven years later, in *Burlington Northern Railroad* v. *Oklahoma Tax Commission*, this Court held that Section 306's clear language plainly "permits review by federal courts of alleged overvaluation of railroad property by state taxation authorities." 481 U.S. 454, 456, 461 (1987).

*Oklahoma Tax* expressly identified, but left open, a question not presented in that case—whether a railroad could challenge the methodology used by a State to value its property in proving that state taxation authorities had overvalued the railroad's property. *Id.* at 465 n.5. The decision below, over a strong dissent, has deepened an already existing split among the circuits on this open question. At present, the Second and Ninth Circuits have held that railroads can prove the true market value of their property by using appraisal approaches different from those used by state taxing authorities, while the Fourth and Eleventh Circuits have held that railroads cannot

challenge the States' chosen methods. Certiorari is warranted to resolve this fundamental split of authority.

Moreover, the decisions of the Fourth and Eleventh Circuits ignore the clear language of the statute and frustrate the statute's fundamental purpose, which is to prevent discriminatory taxation of railroad property. By ignoring the clear intent of Congress, the decisions open a gaping loophole through which States can extract a disproportionate share of tax revenue from interstate railroads without fear of federal remedy. Indeed, there is already evidence that States in the affected jurisdictions have become increasingly aggressive in valuing railroad property. This Court's immediate intervention is imperative.

### A. Statutory Background

Nearly 40 years ago, Congress recognized that interstate railroads "are easy prey for State and local tax assessors." S. Rep. No. 91-630, at 3 (1969). And, more than 30 years ago, after years of careful study, Congress determined that excessive and discriminatory taxation "by at least $50 million each year" contributed to the financial hardship that then plagued the railroad industry. H.R. Rep. No. 94-725, at 78 (1975).

Congress enacted the 4-R Act to address myriad problems that had left virtually the entire railroad industry in precarious financial condition and had resulted in eight major railroad bankruptcies. H.R. Rep. No. 94-725, at 53; S. Rep. No. 94-499, at 2-3 (1975), *reprinted in* 1976 U.S.C.C.A.N. 14, 15-17. Section 306 was a critical part of that reform, through which Congress intended "'to put an end to the widespread practice of treating for tax purposes the property of [railroads] on a different basis than other property in the same taxing district.'" S. Rep. No. 91-630, at 2.

Section 306 of the 4-R Act (hereinafter referred to as Section 11501, its present section within the U.S. Code) specifically outlaws four enumerated taxation practices of state and

local governments that "unreasonably burden and discriminate against interstate commerce," including:

> [a]ssess[ing] rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

49 U.S.C. § 11501(b)(1).

This statute, which is the focus of this dispute, thus prescribes a precise formula for determining the existence of discrimination. Discrimination is measured by the ratio of assessments to "true market value," and the true market value of the railroad's property is a necessary factual finding that a district court must make in resolving a Section 11501(b)(1) claim.

Notwithstanding the Tax Injunction Act, 28 U.S.C. § 1341, Congress also granted federal district courts "jurisdiction . . . to prevent a violation of [Section 11501(b)]," but only "if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. § 11501(c). Finally, Congress specified that "[t]he burden of proof in determining assessed value and true market value is governed by State law." *Id.*

### B. *Burlington Northern Railroad* v. *Oklahoma Tax Commission*

Eleven years after the 4-R Act became law, this Court granted certiorari to determine whether Section 11501 "permits review by federal courts of alleged overvaluation of railroad property by state taxation authorities." *Okla. Tax*, 481 U.S. at 456. This Court recognized that the 4-R Act's purpose was "'to provide the means to rehabilitate and maintain

the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States.'" *Id.* at 457 (quoting § 101(a) of the Act). Finding that "'railroads are over-taxed by at least $50 million each year,'" Congress chose to accomplish "the goal of furthering railroad financial stability" by prohibiting "discriminatory state taxation of railroad property." *Id.* (quoting H.R. Rep. No. 94-725, at 78). This Court acknowledged that Section 11501 was "Congress' solution to the problem of discriminatory state taxation of railroads." *Id.*

This Court stated that "the language of § 11503 [now § 11501] plainly declares the congressional purpose," holding that "[i]t is clear from this language that in order to compare the actual assessment ratios, it is necessary to determine what the 'true market values' are." *Id.* at 461. Although the court of appeals in that case had "found that its restrictions on valuation actions under § 11503 [now § 11501] [were] necessary in order to avoid 'an inevitable clog of federal dockets' and 'unreasonable delay of the state tax collection process,'" *id.* at 464, this Court rejected such considerations, stating:

> These are policy considerations which may have weighed heavily with legislators who considered the Act and its predecessors. It should go without saying that we are not free to reconsider them now.

*Id.*

In passing, this Court briefly explained in a footnote an issue that had not been presented by petitioner and left that issue open for resolution another day:

> Petitioner has not challenged the valuation methodology employed by respondents in determining the value of petitioner's railroad; petitioner's sole challenge is to the application of that methodology . . . . This case therefore does not present the question whether a railroad may, in an action under [Section 11501] challenge in the district court the appropriateness of the accounting

> methods by which the State determined the railroad's value, or is instead restricted to challenging the factual determinations to which the State's preferred accounting methods were applied. Accordingly, we express no view on that issue.

*Id.* at 463 n.5.

### C. Factual Background

This case involves CSXT's challenge to the 2002 valuation of its property by the State Board of Equalization of Georgia ("the Board"), and raises the issue left open in *Oklahoma Tax*. Under Georgia law, most commercial and industrial property is locally assessed by county boards, but public utilities (including railroads) are centrally assessed by the State. Georgia counties are permitted, but not required, to use the State's proposed assessment for each county in imposing taxes. Pet. App. 2a-3a.

In Georgia, the Property Tax Division of the Georgia Department of Revenue ("the Department") prepares assessments for review and approval by the Board. In 2002, as in prior years, the Department calculated the market value of all public utilities using the unit rule. Under the unit rule, the value of the railroad as a whole is calculated, and the Georgia portion of that property is determined by multiplying the unit value by the percentage of CSXT rail miles in Georgia. Pet. App. 3a.

In 2002, the State's appraiser changed the valuation methods that the Department used to calculate value under the unit rule. Formerly, the Department used a yield capitalization method (an income approach), a direct capitalization method (an income approach), and a stock-and-debt method (a sales comparison approach). Each method generates a value that could be compared to the others. For the 2002 tax year, the appraiser replaced the first two of those methods with a discounted cash flow ("DCF") method (an income approach) and

a market multiples method (a sales comparison approach). Pet. App. 4a.

The appraiser generated five values from these approaches, ranging from $8.126 billion (using the DCF method) to $12.346 billion (using the market multiples method). Pet. App. 4a. The appraiser selected a unit value of $8.2 billion as close to the lower of his estimates.[2] *Id.* at 5a. The appraiser's 2002 overall unit value for CSXT of $8.2 billion was 47.1% higher than the 2001 valuation. *Id.* at 62a. After adjustments and deductions, the appraiser calculated taxable market value of CSXT in Georgia (based on the percentage of rail miles in the State) at $514.9 million. *Id.* That was an increase of 36.3% from the 2001 Georgia taxable value. Moreover, the 2002 taxable value would result in an increase in CSXT's property tax liability in Georgia to $6.5 million, whereas its 2001 liability was only $4.6 million.

**D. Proceedings Below**

1. *The District Court.* CSXT filed a complaint in the United States District Court for the Northern District of Georgia challenging the Department's valuation under Section 11501 of the 4-R Act. Pet. App. 5a.

CSXT argued that the proposed valuation violated Section 11501(b)(1) because the Railroad's true market value was $6 billion, not $8.2 billion, and thus "it was taxed at a higher ratio of assessed value to true market value than other commercial and industrial property." Pet. App. 7a. CSXT submitted an appraisal prepared by a valuation expert, Thomas Tegarden, whose credentials were described by the district court as "'impeccable.'" *Id.* (quoting 448 F. Supp. 2d at 1333). Tegarden used three different methods to approximate "true market value," but relied primarily on a yield capitalization approach. *Id.* at 7a-8a. Based on a unit value of $6 billion, he

[2] Georgia's 2002 unit value of $8.2 billion was the highest among the 15 States where CSXT operates that use the unit value method. Tr., vol. 11, at 578.

calculated the value of CSXT's Georgia property as worth $369.3 million. *Id.* at 25a.

The district court held that it was not permitted to consider Tegarden's appraisal because the 4-R Act barred consideration of appraisals "based on a valuation methodology different from the methodology used by the State, unless the methodology of the State is irrational or intentionally discriminatory." Pet. App. 7a. The district court elaborated:

> This is a case brought under the 4-R Act and the court must determine the true market value of CSXT. *CSXT, in turn, has the burden of proving by a preponderance of the evidence that the true market value of its property is $6 billion.* To do this, CSXT presented two types of evidence. First, it criticized the Department's calculations. Second, it presented a valuation of its property by Mr. Tegarden. *In a more typical case, the court would look to both Mr. Tegarden's appraisal and the Department's appraisal to determine the true market value of CSXT.* If the court found by a preponderance of the evidence that CSXT's true market value was $6 billion, as proposed by CSXT, then the court would compare the Department's Proposed Valuation to CSXT's true market value to determine if discrimination occurred. *However, as explained later in this order, the court cannot consider Mr. Tegarden's valuation because it was prepared using different valuation methods than the Department. The court, therefore, is limited to looking solely at CSXT's criticisms of the Department's valuation.*

*Id.* at 37a n.8 (emphases added).

The district court further rejected CSXT's argument that Tegarden's valuation methodology was a variant of the State's own methodology. Pet. App. 45a. Finally, the district court rejected CSXT's challenges to the Board's calculations, and found that the unit value of CSXT's property was $7.7

billion, and therefore the ratio of assessed to market value of CSXT's property did not exceed by more than 5% the same ratio for other commercial and industrial property. The district court accordingly entered judgment for the Board. Pet. App. 48a.

2. *The Eleventh Circuit.* A divided court of appeals affirmed. The court began by stating that "[w]hether a railroad may challenge, under the 4-R Act, the valuation methodology of a state is a question the Supreme Court has acknowledged but not decided." Pet. App. 9a (citing *Okla. Tax*, 481 U.S. at 462-63 & n.5). The Eleventh Circuit then expressly recognized a circuit split:

> Three of our sister circuits, following *Burlington Northern v. Oklahoma*, have split on whether railroads may challenge state valuation methodologies. The Fourth Circuit, on the one hand, has concluded that the 4-R Act does not permit a railroad to challenge the valuation methodology of a state. That circuit concluded that the text of the Act is ambiguous, and the court was "not inclined to disregard" the general policy of noninterference in matters of state taxation contained in the Tax Injunction Act "where § [11501] does not plainly authorize such an exception." *Chesapeake W. Ry. v. Forst*, 938 F.2d 528, 531 (4th Cir. 1991); *accord Richmond, Fredericksburg & Potomac R.R. Co. v. Forst*, 4 F.3d 244, 250 (4th Cir. 1993). The Second and Ninth Circuits, on the other hand, have repudiated *Chesapeake Western* and held that railroads may challenge valuation methodologies. In *Burlington Northern Railroad v. Department of Revenue*, the Ninth Circuit explained that section 11501(c) of the 4-R Act provides that state law governs the burden of proof in challenges to assessed value and true market value. 23 F.3d 239, 241 (9th Cir. 1994). Because determinations of property value by public officials in the State of Washington may be defeated by "clear, cogent and convincing evidence," the

> court reasoned that state valuation methodologies may likewise be defeated by clear, cogent, and convincing evidence. *Id.* In *Consolidated Rail Corp. v. Town of Hyde Park*, the Second Circuit held that, at least where states use a unique method to appraise railroads, the 4-R Act allows railroads to challenge valuation methodology. 47 F.3d 473, 482 (2d Cir. 1995).

*Id.* at 10a.

The Eleventh Circuit sided with the Fourth Circuit, applying the "clear statement rule" of *Gregory* v. *Ashcroft*, 501 U.S. 452, 460-61 (1991). Pet. App. 11a-12a. Citing *Department of Revenue* v. *ACF Industries, Inc.*, 510 U.S. 332 (1994), which involved a different subsection of Section 11501, Pet. App. 13a-14a, the court found no clear statement that railroads could challenge the methodology by which the valuation was made.

The court also rejected the argument of CSXT and *amicus curiae* Association of American Railroads "in the alternative, that the appraisal by Tegarden was based on the same methodology used by the State" and represented merely a different approach to applying the same "unit rule" methodology. Pet. App. 15a. The Eleventh Circuit interpreted the Supreme Court in *Oklahoma Tax* as drawing a distinction between "accounting methods" and "factual determinations," and the court below held that the former encompassed "all nonfactual determinations involved in constructing a valuation process, regardless of how broad or narrow they may be." *Id.* at 16a-17a. The railroad could not contest any such nonfactual determinations in proving "true market value" under Section 11501(b)(1).

Judge Fay concurred in part but dissented with regard to "the majority's holding that the 4-R Act bars the Railroad from challenging the valuation methodology chosen by the state," agreeing with the majority that "our sister circuits have split on this issue." Pet. App. 20a. Judge Fay declared that

"[t]he language of the statute is straightforward and prohibits states from assessing rail transportation property at a value that has a higher ratio to the true market value than the ratio that the assessed value of other commercial and industrial property has to its true market value." *Id.* Judge Fay concluded:

> Since the objective of any methodology is a determination of true market value, a railroad should be allowed to challenge the method used in an attempt to prove that the result of such a method was not the true market value of its property. . . . If the Railroad can prove that the method used by the state does not result in a fair appraisal of true market value and that the assessed value is in fact at a ratio higher than five percent of the ratio of true market value and assessed value of other commercial and industrial property, it is entitled to relief.

*Id.* at 23a.

## REASONS FOR GRANTING THE PETITION

This Court should grant the petition to resolve a clear and acknowledged conflict among the circuits over whether railroads may challenge the State's methodology in proving "true market value" under the 4-R Act. Since *Oklahoma Tax* identified the issue, courts of appeals have hopelessly divided in grappling with it. The Second and Ninth Circuits have properly ruled that railroads can prove the "true market value" of their property by use of appraisal methods different from those employed by the state tax authorities. In contrast, the Eleventh Circuit (in the decision below) and the Fourth Circuit have ruled that railroads may not challenge state methodologies in satisfying their "true market value" burden. Indeed, the Eleventh Circuit has gone the farthest of any court, eviscerating the discrimination protections of the Act by immunizing from federal court review "all nonfactual determinations involved in constructing a valuation process, regard-

less of how broad or narrow they may be." Pet. App. 16a-17a.

The Fourth and Eleventh Circuit's holdings are wrong because they cannot be reconciled with the plain language of the statute and with any meaningful policy of protecting railroads against discriminatory taxation. Section 11501 prescribes a precise formula for measuring discrimination. Under that formula, true market value is the economic standard by which the existence and degree of discrimination is determined. If States are free to define unalterably the methods by which the true market value of railroad property may be proven in court, railroads will be severely prejudiced in proving discrimination under the statute.

Moreover, such incorrect decisions create perverse incentives for States to pick methodologies that artificially inflate railroad property values. Indeed, there is already evidence that States are becoming more aggressive in their valuations of railroad property. See *infra*, at 19-22. Accordingly, this Court should grant review.

## I. THE DECISION BELOW DEEPENS AN ALREADY EXISTING SPLIT AMONG THE CIRCUITS REGARDING THE RAILROADS' ABILITY TO CHALLENGE STATE METHODOLOGY.

As the Eleventh Circuit acknowledged (Pet. App. 10a, 13a-14a; *supra* at 9-10), there is a 2-2 split among the courts of appeals on the question left open by *Oklahoma Tax*:[3] whether

[3] It is notable that the Department of Justice, in a brief filed by the Solicitor General in the *Oklahoma Tax* case, has already advised this Court of its position that Section 11501(b)(1) permits challenges *both* to the methodology and to application of the methodology: "Section [11501] prohibits any overvaluation of railroad property that results from an assessment rule or *methodology* that—*either on its face or as applied*—systematically determines excessive values for railroad property." Brief for the United States as *Amicus Curiae* in Support of Petitioner at 12, *Burlington N. R.R.* v. *Okla. Tax Comm'n*, 481 U.S. 454 (1986) (No. 86-337) (internal quotation marks and citation omitted) (emphasis added).

the railroad may fully adjudicate its true market value as part of its Section 11501 case by challenging the State's methodology. The Eleventh Circuit joined the Fourth Circuit in ruling that railroads may not prove true market value of railroad property except by the valuation methods the State employs. In stark contrast, the Second and Ninth Circuits have ruled to the contrary. This Court should resolve the mature and expanding conflict.

1. *Fourth Circuit.* The first court of appeals to address the issue left open by *Oklahoma Tax* was the Fourth Circuit. In that case, the plaintiff-railroads contended that "Virginia's valuation method for railroad property impermissibly discriminates against railroads by valuing railroad property in excess of its true market value." *Chesapeake W. Ry.* v. *Forst*, 938 F.2d 528, 529 (4th Cir. 1991). Rejecting the plaintiff-railroads' claim, the court of appeals explicitly held that "challenges to state valuation methodologies are not cognizable under § [11501]." *Id.*

The court of appeals explained that there were two methods of valuation in dispute in the case: "inventory and summation" and "unit method." *Id.* When Virginia replaced the unit method with the inventory and summation method, the plaintiff-railroads brought suit, "charging that valuation of railroad property under the inventory and summation methods results in such property being assessed at a greater than true market value." *Id.* at 530.

Specifically, the court concluded:

> § [11501] does not provide a basis for railroads to challenge a state's preferred methodology for ascertaining the true market value of railroad property. The statute simply does not authorize the judiciary to enter into the difficult task of second-guessing a state's policy assessment of how best to value property. In light of Congress' expressed preference against federal interference in state taxation policy, we believe that § [11501] should

> be read narrowly, authorizing challenges to a state's calculation of fair market value, but not to a state's method for calculating such value. . . . The 4-R Act does not authorize the judiciary to undertake the difficult, and arguably impossible, task of determining which specific assessment methodology produces true market value of railroad property.

*Id.* at 533.

Although the Fourth Circuit later made clear that a plaintiff-railroad could file suit challenging the *application* of the State's methodology, it reaffirmed its holding in *Chesapeake Western* that "'§ [11501] does not provide a basis for railroads to challenge a state's preferred methodology for ascertaining the true market value of railroad property.'" *Richmond, Fredericksburg & Potomac R.R. v. Forst*, 4 F.3d 244, 248-49 (4th Cir. 1993) (quoting *Chesapeake Western*, 938 F.2d at 533); see also *id.* at 250 ("Although a plaintiff railroad must accept a state's chosen methodology, § [11501] does not require that it accede to the state's application of that methodology.").

2. *Ninth Circuit.* The second court of appeals to address the issue was the Ninth Circuit, which expressly disagreed with the Fourth Circuit's reasoning. There, the plaintiff-railroad argued that the district court had "wrongly relied" on *Chesapeake Western* in "deferring to the state's choice of the valuation method used to set the market value of its property." *Burlington N. R.R.* v. *Dep't of Revenue*, 23 F.3d 239, 240 (9th Cir. 1994). The Ninth Circuit explained that *Chesapeake Western* had held that "although a railroad may challenge the application of the valuation method used by a state, it cannot challenge the method itself." *Id.*

The Ninth Circuit stated that it "need not decide whether *Chesapeake Western* should be followed in this circuit," *id.*, for the district court had not precluded the plaintiff-railroad "from challenging the state's method of valuation," but in-

stead had allowed the railroad "to present evidence of the railroad's value based on other valuation methods." *Id.* Importantly, the court of appeals held that it was "proper" that "the district court did not blindly accept the state's valuation method. It simply gave substantial deference to it" under Washington state law, where "the determination of the value of the property by public officials is presumed correct" and "[t]his presumption may be defeated only by evidence that is 'clear, cogent and convincing.'" *Id.* at 240-41 (quoting RCW 84.40.0301(1)); see also *id.* at 241 (holding that the district court had "correctly applied" the Washington law standard).[4] The Ninth Circuit rule, as summarized by the court below in rejecting it, is that "state valuation methodologies may . . . be defeated by" expert valuation evidence satisfying the applicable standard of proof. Pet. App. 10a.

3. *Second Circuit.* The Second Circuit then deepened the existing split between the Fourth and Ninth Circuits. The court recognized that in its case, the "controversy stems primarily from the difference in appraisal methods. The [State] had used the 'cost approach' method for determining true market value, while [the plaintiff's] experts have applied both the 'income capitalization method' and the 'stock and debt' method." *Consol. Rail Corp.* v. *Town of Hyde Park*, 47 F.3d 473, 480 (2d Cir. 1995).

"Relying primarily on" *Chesapeake Western*, the State in *Hyde Park* argued that the plaintiff-railroad was "bound by the method of appraisal the [State] ha[d] chosen, and that the court could not "consider any other method of valuation in fixing the 'true market value' of" the plaintiff-railroad's properties. *Id.* at 481-82. The Second Circuit explicitly rejected the *Chesapeake* court's view that "the method of appraisal as a matter of state policy . . . was beyond the reach of the 4-R

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[4] Section 11501 provides that "[t]he burden of proof in determining assessed value and true market value is governed by State law." 49 U.S.C. § 11501(c).

Act," holding unequivocally, "[w]e do not accept that interpretation of the statute." *Id.* at 482.

4. *Eleventh Circuit.* CSXT urged the Eleventh Circuit to steer clear of the error of the Fourth Circuit's *Chesapeake Western* decision, arguing that the income approach used by its appraiser was the same income "method" used by the State's appraiser. CSXT C.A. Reply Br. at 14-17. The Eleventh Circuit rejected that argument, sided with the Fourth Circuit on the methodological issue, and acknowledged a conflict with the Second and Ninth Circuits. Pet. App. 10a, 13a-14a. See *supra* at 9-11 (discussing decision below).

## II. THE DECISION BELOW DIRECTLY CONTRAVENES THE PLAIN LANGUAGE OF THE STATUTE AND UNDERMINES THE FEDERAL ANTI-DISCRIMINATION REMEDY.

The mature and acknowledged 2-2 circuit split alone warrants issuance of the writ, but this Court's intervention is all the more imperative given the Eleventh Circuit's critical error in interpreting Section 11501 on this important and recurring issue of federal law.

The Eleventh Circuit's myopic interpretation of Section 11501(b)(1) cannot be reconciled with the plain language of the statute. The entire "true market value" of the railroad is an element of a Section 11501(b)(1) claim and a matter to be resolved by the courts; as this Court explained, "[i]t is clear from this language that in order to compare the actual assessment ratios, it is necessary to determine what the 'true market values' are." *Okla. Tax*, 481 U.S. at 461. True market value is a question of fact on which the railroad bears the burden of proof, 49 U.S.C. § 11501(c), and there is nothing in the statute that commands the trier of fact to defer to a state tax agency's choice of valuation methods.

A federal court cannot accomplish its statutory mandate of determining the ultimate fact of "*true* market value" if it is hamstrung by the Eleventh and Fourth Circuits' rule that the

reviewing court must accept the State's valuation methodology. As this Court recognized in *United States* v. *Miller* concerning the Just Compensation Clause, in the absence of a functioning market that prices the property, a jury determination of "fair market value" necessarily "involves the use of assumptions, which make it unlikely that the appraisal will reflect true value with nicety." 317 U.S. 369, 374 (1943). Even if the determination of overall "fair market value" in such circumstances is but "a guess by informed persons," *id.* at 374-75, it is still necessarily a question of fact within the fact finder's province, to be decided based on all relevant evidence. As the district court here recognized, that is the standard practice in every proceeding in which a property's market value is at issue. Pet. App. 37a n.8; *supra* at 8. As the Ninth Circuit has recognized:

> Complex factual inquiries such as valuation require the trial judge to evaluate a number of facts: whether an expert appraiser's experience and testimony entitle his opinion to more or less weight; whether an alleged comparable sale fairly approximates the subject property's market value; and the overall cogency of each expert's analysis. Trial courts have particularly broad discretion with respect to questions of valuation.

*Ebben* v. *Commissioner*, 783 F.2d 906, 909 (9th Cir. 1986) (determination of "fair market value" under federal tax laws). Congress clearly intended district courts to determine the "true market value" of railroad property with the aid of expert testimony, including expert testimony on appropriate valuation methods.

Thus, even if a "clear statement" were required, Congress's mandate that federal district courts determine the "*true* market value" of railroad property in resolving a claim of discriminatory property tax assessments amply suffices. See 49 U.S.C. § 11501(b)(1). Regardless, the Eleventh Circuit's invocation of the "clear statement rule" is improper. The court relied on *Department of Revenue* v. *ACF Industries, Inc.*, 510 U.S. 332

(1994), but that case raised a much different question under the 4-R Act. At issue in *ACF* was subsection (b)(4), which prohibits "another tax that discriminates against a rail carrier." 49 U.S.C. § 11501(b)(4). The question presented was "[w]hether a tax upon railroad property is even subject to challenge under subsection (b)(4) on the ground that certain other classes of commercial and industrial property are exempt." 510 U.S. at 339-40. This Court recognized that "Congress did not state whether exemptions are a form of forbidden discrimination against rail carriers, and further did not provide a standard for courts to distinguish valid from invalid exemption schemes." *Id.* at 343. This Court consequently held that § 11501(b)(4) "does not limit state discretion to levy a tax upon railroad property while exempting various classes of nonrailroad property." *Id.*

However, in recognizing this ambiguity of subsection (b)(4), this Court reiterated that Congress's intent was clear in subsections (b)(1) through (b)(3):

> *The reach of subsections of (b)(1)-(3) is straightforward:* These provisions forbid the imposition of higher assessment ratios or tax rates upon rail transportation property than upon "other commercial and industrial property." The scope of subsection (b)(4), which forbids the imposition of "another tax that discriminates against a rail carrier providing transportation," is not as clear.

*Id.* at 337 (emphasis added). This Court further recognized with regard to subsections (b)(1)-(3): "In drafting [section 11501], Congress prohibited discriminatory tax rates and assessment ratios *in no uncertain terms*, and set forth *precise standards for judicial scrutiny* of challenged rate and assessment practices." *Id.* at 343 (internal citations omitted) (emphasis added). As explained in *Oklahoma Tax*, one of those "precise standards for judicial scrutiny" is the Subsection (b)(1) formula, which requires proof of the railroad property's "true market value." See 481 U.S. at 461-62.

Congress made a clear choice to outlaw discrimination against railroads in property assessments, and granted railroads a remedy in federal court to enforce that antidiscrimination right. Congress defined a ratio of assessed to "true market value" as the measure of discrimination between railroad property and other commercial and industrial property, and committed the determination of "true market value" to the federal district court. It simply makes no sense to interpret Section 11501(b)(1) to disable railroads from challenging (and federal courts from reviewing) the principal means by which States may accomplish discrimination: by choosing improper methods that inflate estimations of the market value of railroad property.

* * * *

Section 11501 requires courts to determine the "true market value" of railroad property based upon any and all competent evidence. However, the decision of the court below, by forbidding consideration of appropriate "accounting methods," expansively defined as "all nonfactual determinations involved in constructing a valuation process, regardless of how broad or narrow they may be," Pet. App. 17a, effectively immunizes much discrimination from the federal judicial remedy of Section 11501. Consequently, States have an incentive to adopt discriminatory methods of valuing railroad property. Unless this Court grants this petition and strikes this judicially created "methodology" exception, Congress's intent to eliminate discriminatory taxation of the railroad industry will have been successfully thwarted by the States.

## III. IMMEDIATE REVIEW IS NECESSARY BECAUSE THE RULE BELOW HANDCUFFS RAILROADS IN CHALLENGING THE RECENT RAPID AND AGGRESSIVE ESCALATION OF STATE PROPERTY VALUATIONS.

States revalue railroad property for tax assessments on an annual basis. The Eleventh Circuit's bar on valuation chal-

lenges openly invites state tax officials to devise discriminatory methods for valuing railroad property. Indeed, as discussed below, there is already evidence that state appraisers are becoming bolder in their determinations of "true market value" for railroads running through their States. These developments make this Court's immediate intervention all the more necessary.

With state governments under substantial fiscal pressure, it is not surprising that a judicial decision immunizing valuation methodologies from federal court review would spur States to become more aggressive in valuing railroad property, with dire financial consequences for the railroads. The Fourth Circuit's *Chesapeake Western* decision had just such an effect. After the Fourth Circuit issued *Chesapeake Western* on July 12, 1991, the Virginia Department of Taxation certified revised assessments for the 1988 and 1989 tax years on August 23, 1991, barely enough time to let the ink dry on the *Chesapeake Western* opinion. *Forst*, 4 F.3d at 247. The Fourth Circuit recognized that "[t]he revisions produced substantial increases in the assessed values of [the plaintiff-railroad's] property." *Id.* Specifically, the Fourth Circuit highlighted that Virginia had changed its methods when it certified the revised assessments and that under the revised method, the plaintiff-railroad's assessment for tax year 1988 in Alexandria increased from $15,293,168 to $111,663,882—an increase of 730 percent over the original assessment. *Id.*

Similarly, in the wake of the district court decision in this case, Georgia has substantially increased its estimation of the unit value of CSXT and other railroads. As noted above, the 2002 Georgia taxable value for CSXT was $514.9 million, 36.3% higher than the 2001 value. See *supra*, at 7. In 2006, the Georgia appraiser used a new appraisal method, which resulted in an average Georgia taxable value increase of 46.6% for properties of all railroads operating in the State. See State Bd. of Equalization, *Public Utility and Airline Flight Equipment Digest* 2 (2006). By contrast, the average

Georgia taxable value for all other centrally assessed properties increased by only 5.6%. See *id.* For CSXT, Georgia's new appraisal method resulted in a unit value of $11.2 billion, and consequently a Georgia taxable value of $762 million. That was a 40.6% increase over the 2005 Georgia taxable value. If the Eleventh Circuit's decision stands, railroads will be handcuffed in remedying such discrimination, because of these limitations placed on challenges to the values as fixed by the States.

Nor are the recent jumps in estimated unit value isolated occurrences limited to Georgia. For the 2003 tax year, Florida initially valued CSXT at $13 billion, which resulted in a Florida taxable value of about $723 million. CSXT brought suit in federal court to challenge that overvaluation, and the parties subsequently settled at a Florida taxable value of $488 million. The $488 million settlement was part of a three-year settlement, in which the CSXT taxable value in Florida dropped to $478 million for 2004 and to $468 million for 2005. The settlement was executed before the district court issued its decision below in this case. Subsequently, when the settlement expired in 2006, Florida valued CSXT at approximately $12.9 billion, which was a 57% increase over the unit value found by the district court below. The new unit value resulted in a Florida taxable value in 2006 that was 49% higher than the 2005 settlement value. CSXT's property tax in Florida rose from $8.7 million in 2005 to $13.2 million in 2006, an increase of 52%. Yet CSXT may be impermissibly precluded by the decision below from challenging in federal court anything but the state appraiser's "factual determinations."

The portrait in the States where CSXT operates is not only one of rapid and unjustifiable inflation of railroad property valuations, but also increasing arbitrariness. CSXT's national unit value in a given year is, in theory, a single number. In practice, however, each year some States adopt breathtakingly high unit values that far exceed the range of values adopted

by most States. In the 2006 tax year, for example, Georgia and Florida had adopted CSXT unit values of $11.2 and $12.9 billion respectively, which far exceeded the average value of $7.1 billion in the other States in the Fourth and Eleventh Circuits that use the unit value method. Such prejudicial and arbitrary variation in valuations of railroad property could be remedied if the 4-R Act were given its intended scope, and if federal district courts were given proper latitude to determine the "true market value" of railroad property, rather than deferring to the self-interested valuation methods employed by state tax agencies.

In the face of the aggressive and discriminatory escalation of railroad property valuations and tax burdens, this Court should not leave unsettled the important question of the scope of the federal antidiscrimination remedy of Section 11501(b)(1) of the 4-R Act on which the lower courts are divided. The amount of taxes that are now being discriminatorily assessed on railroad property far exceed the $50 million in overtaxation that prompted Congress to pass the 4-R Act in the 1970's. H.R. Rep. No. 94-725, at 78. Discrimination in property tax assessments is particularly insidious because state taxable values tend inexorably to increase over time. Discriminatory assessments for tax years that are currently in litigation or settlement negotiations will be forever lost to railroads if this Court were to defer review. Intervention by this Court is imperative to resolve the circuit conflict, and to rectify the state methodology abuses that are currently practiced.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 23, 2007

# APPENDIX

# APPENDIX A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

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No. 05-16000

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CSX TRANSPORTATION, INC.,
*Plaintiff-Appellant,*

v.

STATE BOARD OF EQUALIZATION, of the State of Georgia, JERRY JACKSON, as Commissioner of Revenue of the State of Georgia, RUSSELL W. HINTON, as State Auditor of the State of Georgia, RAY J. CRAWFORD, as Director of the Georgia State Properties Commission,
*Defendants-Appellees.*

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Dec. 19, 2006

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Appeal from the United States District Court
for the Northern District of Georgia.

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Before BIRCH, PRYOR and FAY, *Circuit Judges.*

PRYOR, *Circuit Judge*:

This appeal presents a question about state taxation of railroad properties that was expressly left open by the Supreme Court of the United States, has since divided the federal appellate courts, and involves the traditional balance of federal and state power. We are asked to decide whether section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act or the Act), 49 U.S.C. § 11501, allows a railroad to challenge the methodology by which a state determines the true market value of railroad property for

*ad valorem* tax purposes. The 4-R Act provides an exception to the general rule of the Tax Injunction Act that federal district courts will not interfere with matters of state taxation. *Compare id. with* 28 U.S.C. § 1341. This appeal turns on the breadth of that exception.

CSX Transportation, Inc. (the Railroad) filed a complaint against the State Board of Equalization of Georgia (the Board), under section 306 of the Act, in which it challenged the appraisal of its property by the Board at $8.2 billion. Section 306 requires, for purposes of levying a property tax, that the ratio of assessed value to true market value of railroad property not exceed by more than five percent the ratio of assessed value to true market value of all other commercial and industrial property in the same assessment jurisdiction. 49 U.S.C. § 11501(c). The district court refused to consider an appraisal proffered by the Railroad that valued the property of the Railroad at $6 billion because the district court concluded that the appraisal was based on a valuation methodology different from the one used by the State. *CSX Transp. v. State Bd. of Equalization*, 448 F.Supp.2d 1330, 1348 (N.D.Ga.2005). The Railroad argues that the 4-R Act allows it to challenge the valuation methodology of a state. Because the Act does not clearly state that railroads may challenge state valuation methodologies, we affirm the judgment of the district court.

## I. BACKGROUND

The Railroad is a wholly-owned subsidiary of CSX Corporation. In tax year 2002, the Railroad provided freight transportation over a network that included a route through the State of Georgia. In Georgia, public utilities are centrally-assessed taxpayers, and public utilities include railroads, investor-owned electric utilities, investor-owned telephone companies, pipeline companies, and gas distribution companies. Although most taxpayers in Georgia are assessed, in the first instance, by county boards of assessors, the State

Revenue Commissioner issues proposed assessments of the property of centrally-assessed taxpayers for each county in which the taxpayer owns taxable property. The Property Tax Division of the Georgia Department of Revenue (the Department) prepares a digest of public utility assessments that the Board reviews and approves. The Board then certifies the proposed assessments to each county in which taxable property is owned. Ga.Code Ann. § 48-2-18(c). Each county "may, but is not required to, use these figures as the county's own tax assessment." *Colonial Pipeline Co. v. Collins*, 921 F.2d 1237, 1240-41 (11th Cir.1991). For 2002, 59 of the 71 Georgia counties in which the Railroad owned taxable property adopted the proposed assessment of the Board.

In 2002, as in preceding years, the Department determined the value of all public utilities using the unit rule. Under this rule, an appraiser first determines the value of all assets of an entity, regardless of location. That amount is then multiplied by the percentage of the entity located within Georgia to determine what portion of the value of the company should be allocated to the state. The Railroad agrees that the unit rule is a proper method of valuation under Georgia law.

Although there are several different methods for determining the value of a company or property under the unit rule, those methods fall into three general categories: the sales comparison approach, the cost approach, and the income approach. Under a sales comparison approach, a company or property is appraised by examining actual sales of comparable companies or properties. Under the cost approach, an appraiser adds together the original costs of the various components of a company or property and makes deductions for depreciation or obsolescence. Under an income approach, an appraiser determines the future income stream of a company or property over the life of the company or property.

Gregg Dickerson prepared the valuation worksheets for the appraisal of the Railroad in 2002. Dickerson was an ap-

praiser with 30 years of experience, including experience regarding the use of the unit rule in public utility valuation. Dickerson performed unit valuations at the Department for ten years before leaving in 1993 to work in the tax department at Norfolk Southern Railroad. Dickerson returned to the Department in 2001 to serve as the Program Manager of its Public Utilities section.

When Dickerson returned to the Department, he altered the combination of valuation methods the Department used to calculate value under the unit rule. The Department had been calculating the unit values of all public utilities using a yield capitalization method (an income approach), a direct capitalization method (another income approach), and a stock and debt method (a sales comparison approach). For tax year 2002, Dickerson replaced the first two methods with a discounted cash flow method (an income approach) and a market multiples method (a sales comparison approach). Dickerson retained the third method.

Dickerson appraised the property of the Railroad using these three methods. He first used the stock and debt method, which assumes that the value of a company equals the sum of its outstanding debt and its equity. Under this method, Dickerson's appraisal was $12.022 billion.

Dickerson next used the discounted cash flow method. Under this method, an appraiser first projects the cash flows of a company for a designated number of years after the assessment date and discounts those expected cash flows to their present value. The appraiser then calculates a terminal or reversion value that represents the value of the company at the end of the projection period. These two values together give the appraiser his unit value for the company. Dickerson calculated four terminal values using different indicators of reversion. The unit value calculated using a terminal growth rate of 63 percent was the lowest of the four, and Dickerson

selected that value. Dickerson's appraisal, under this method, was $8,126,293,350.

Finally, Dickerson used the market multiples method. This method requires an appraiser to derive market multiples from the stock prices of companies engaged in similar lines of business and compare those multiples with the subject company to determine its value. Dickerson performed three different market multiples analyses, which resulted in appraisals of $12.346 billion, $10.769 billion, and $8.474 billion.

The five values derived from these three methods gave Dickerson a valuation range of $8.126 to $12.346 billion. As he did with all public utilities that year, Dickerson selected an amount at the lower end of that range to avoid potential litigation. Dickerson selected $8.2 billion as the lower limit of what the unit value of the Railroad might reasonably be. He then deducted $400 million to account for intangible property not subject to *ad valorem* taxation. Ga.Code Ann. § 48-6-21. The adjusted unit value of $7.8 billion was multiplied by 7.194059 percent, which was the percentage of the track of the Railroad located in Georgia, which resulted in an allocated value of $561,136,602. Dickerson made further deductions for motor vehicles, pollution control equipment, and an exempt rail line, and he arrived at a taxable fair market value of $514,862,672.

The Railroad filed a complaint under the 4-R Act that challenged the valuation proposed by the Department. The Act bars states from discriminating against railroads when levying property taxes:

> The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:
>
> (1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail

> transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
>
> (2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.
>
> (3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.
>
> (4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

49 U.S.C. § 11501(b).

When a violation of the 4-R Act reaches a certain quantitative threshold, redress is allowed as an exception to the Tax Injunction Act, 28 U.S.C. § 341, which ordinarily bars challenges of state taxation practices in federal courts:

> Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law.

49 U.S.C. § 11501(c).

The Railroad argued that it was taxed at a higher ratio of assessed value to true market value than other commercial and industrial property, in violation of section 11501(b)(1), because the true market value of its property for 2002 did not exceed $6 billion. The Railroad submitted an appraisal prepared by Thomas Tegarden, whose credentials the district court described as "impeccable." *CSX Transp.*, 448 F.Supp.2d at 1333. Tegarden used three valuation methods, two of which had not been used by the Department: a stock and debt method, a cost method, and a yield capitalization method. These methods produced valuations of $9.367 billion, $6.15 billion, and $5.983 billion, respectively. Tegarden gave no weight to his stock and debt value, little weight to his cost value, and primary weight to his yield capitalization value, and concluded that the unit value of the Railroad for tax year 2002 did not exceed $6 billion. Tegarden made the same adjustments as the Department for intangible property, motor vehicles, pollution control equipment, and the exempt rail line, and applied the same track-mile percentage, which resulted in a taxable fair market value of not more than $369,253,752.

The district court concluded that it was not permitted to consider Tegarden's appraisal. The district court interpreted the 4-R Act to bar consideration of appraisals based on a valuation methodology different from the methodology used by the State, unless the methodology of the State is irrational or intentionally discriminatory. *Id.* at 1342. The court rejected the argument that Tegarden's valuation methodology was a variant of the same methodology used by the State. *Id.* at 1343.

The Railroad also challenged the accuracy of several calculations by the Department in its appraisal. In one of these challenges, the Railroad argued that the Department erred in using 6.3 percent as the terminal growth rate in its discounted cash flow valuation. The terminal growth rate

plays a central role in determining the terminal or reversion value in the discounted cash flow method of valuation. Dickerson testified that he chose this rate because it is the long-term growth rate of the gross domestic product and is the type of rate the market would use to estimate the terminal value of a company using a discounted cash flow method. The Railroad argued that this rate was higher than the growth rate used to project cash flows through 2011 (the first half of the discounted cash flow valuation) and, because the Department projected that the revenue of the Railroad would grow at only 2 percent, a growth rate of 6.3 percent would require that expenses become negative.

The district court found that the testimony of the experts of the Railroad on this issue lacked credibility. *Id.* at 1345. The court also found that these experts never stated what the growth rate should actually be. At most, their testimony suggested the Department should have used a rate of 3.5 percent or 4.5 percent, but the court concluded that these rates suffered from the same infirmities as the 6.3 percent rate, including that they would require expenses to become negative. *Id.*

After rejecting the arguments of the Railroad, the district court concluded that the true market value of the Railroad for tax year 2002 was $7,726,293,350. *Id.* at 1350. The court found the figure produced by the discounted cash flow method to be the most accurate appraisal of the value of the Railroad, and the court subtracted $400 million from the discounted cash flow value of the Department ($8,126,293,350) to account for intangible property. *Id.* at 1350 n. 23. The court concluded that the ratio of assessed value to true market value of the property of the Railroad did not exceed by more than five percent the ratio of assessed value to true market value of the other commercial and industrial property in the assessment jurisdiction of the Railroad. *Id.* at 1350. The district court entered a judgment in favor of the Board.

## II. STANDARDS OF REVIEW

We review factual findings of the district court for clear error and conclusions of law *de novo*. *Glassroth v. Moore*, 335 F.3d 1282, 1296-97 (11th Cir.2003).

## III. DISCUSSION

The Railroad raises three challenges to the determination by the district court of its true market value for tax year 2002. The Railroad first contends that the district court erred in holding that the 4-R Act bars a railroad from challenging the valuation methodology chosen by a state. Second, the Railroad argues that, even if it is barred from challenging the methodology of the Board, the appraisal of Tegarden should have been considered by the district court because that appraisal was based on the same methodology used by the Board. Third, the Railroad maintains that the district court clearly erred in accepting the use by the Board of a terminal growth rate of 6.3 percent in its discounted cash flow valuation. We address each argument in turn.

### *A. The 4-R Act Does Not Allow a Railroad to Challenge the Methodology by Which a State Determines Fair Market Value.*

Whether a railroad may challenge, under the 4-R Act, the valuation methodology of a state is a question the Supreme Court has acknowledged but not decided. When it first interpreted the 4-R Act in *Burlington Northern Railroad v. Oklahoma Tax Commission*, the Court held that a railroad need not prove intentional discrimination to challenge factual determinations made by a state in the application of its valuation methodology. 481 U.S. 454, 462-63, 107 S.Ct. 1855, 1860-61, 95 L.Ed.2d 404 (1987). In a footnote, the Court expressly refrained from deciding whether the Act allows a railroad to challenge the valuation methodology itself:

> This case therefore does not present the question whether a railroad may, in an action under § 11503 [now

> § 11501], challenge in the district court the appropriateness of the accounting methods by which the State determined the railroad's value, or is instead restricted to challenging the factual determinations to which the State's preferred accounting methods were applied. Accordingly we express no view on that issue.

*Id.* at 463 n. 5, 107 S.Ct. at 1861 n. 5.

Three of our sister circuits, following *Burlington Northern v. Oklahoma*, have split on whether railroads may challenge state valuation methodologies. The Fourth Circuit, on the one hand, has concluded that the 4-R Act does not permit a railroad to challenge the valuation methodology of a state. That circuit concluded that the text of the Act is ambiguous, and the court was "not inclined to disregard" the general policy of noninterference in matters of state taxation contained in the Tax Injunction Act "where § 306 does not plainly authorize such an exception." *Chesapeake W. Ry. v. Forst*, 938 F.2d 528, 531 (4th Cir.1991); *accord Richmond, Fredericksburg & Potomac R.R. Co. v. Forst*, 4 F.3d 244, 250 (4th Cir.1993). The Second and Ninth Circuits, on the other hand, have repudiated *Chesapeake Western* and held that railroads may challenge valuation methodologies. In *Burlington Northern Railroad v. Department of Revenue*, the Ninth Circuit explained that section 11501(c) of the 4-R Act provides that state law governs the burden of proof in challenges to assessed value and true market value. 23 F.3d 239, 241 (9th Cir.1994). Because determinations of property value by public officials in the State of Washington may be defeated by "clear, cogent and convincing evidence," the court reasoned that state valuation methodologies may likewise be defeated by clear, cogent, and convincing evidence. *Id.* In *Consolidated Rail Corp. v. Town of Hyde Park*, the Second Circuit held that, at least where states use a unique method to appraise railroads, the 4-R Act allows railroads to challenge valuation methodology. 47 F.3d 473, 482 (2d Cir.1995).

The Railroad argues that *Chesapeake Western* was wrongly decided and urges us to follow *Burlington Northern v. Department of Revenue* and *Consolidated Rail* in allowing railroads to challenge valuation methodology. The Railroad contends that the 4-R Act allows a challenge of any act, including the choice of a methodology, that has the effect of discriminating against railroads. The Railroad relies on the statement of the Court in *Burlington Northern v. Oklahoma* that the Act "speaks only in terms of 'acts' which 'unreasonably burden and discriminate against interstate commerce'; nowhere does it refer to the intent of the actor." 481 U.S. at 463, 107 S.Ct. at 1861.

The Railroad also relies on broad statements in previous decisions of our Court. The Railroad reminds us that we have stated that "[t]he legislative history and broad language of the Act show Congress possessed a general concern with discrimination in all of its guises." *S. Ry. v. State Bd. of Equalization*, 715 F.2d 522, 528 (11th Cir.1983). We also have stated that "Congress meant unconditionally to ensure a federal forum for section 11503 [now section 11501] claims." *Id.* at 527.

Notwithstanding our earlier dicta to the contrary, we are persuaded that the Fourth Circuit correctly interpreted the 4-R Act as being subject to a clear statement rule. It is a well-settled principle of statutory interpretation that a statute will not be construed to burden states in the exercise of their traditional powers unless it clearly states its intent to do so. "'If Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute.'" *Gregory v. Ashcroft*, 501 U.S. 452, 460-61, 111 S.Ct. 2395, 2401, 115 L.Ed.2d 410 (1991) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242, 105 S.Ct. 3142, 3147, 87 L.Ed.2d 171 (1985)). "This plain statement rule is nothing more than an acknowledgment that the States

retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Id.* at 461, 111 S.Ct. at 2401.

Perhaps the most fundamental power of a sovereign is the power to tax. This power was originally considered so integral a power of the states as to admit of no abridgement by the federal government, *see* The Federalist No. 32 (Alexander Hamilton), and its singular importance to the states has been repeatedly acknowledged. *See Dep't of Revenue v. ACF Indus.*, 510 U.S. 332, 345, 114 S.Ct. 843, 850, 127 L.Ed.2d 165 (1994) (power to tax is "central to state sovereignty"); *Bode v. Barrett*, 344 U.S. 583, 585, 73 S.Ct. 468, 470, 97 L.Ed. 567 (1953) (power of a state to tax is "basic to its sovereignty"); *Curry v. McCanless*, 307 U.S. 357, 366, 59 S.Ct. 900, 905, 83 L.Ed. 1339 (1939) (power to tax is "incident to" and "coextensive with" sovereignty). This understanding of the relationship of sovereignty and taxation is implicit: "It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments." *Dows v. City of Chicago*, 78 U.S. (11 Wall.) 108, 110, 20 L.Ed. 65 (1871).

The selection of a valuation methodology is part of this fundamental power of a state. *See Louisville & Nashville R.R. v. Dep't of Revenue, Fla.*, 736 F.2d 1495, 1498 (11th Cir.1984) ("These arguments broach delicate issues implicating the state's traditional authority to select methods of valuation."). Important questions of state policy are often intertwined with the selection of a valuation methodology. Time pressures and limited resources, for example, may compel a state to choose a simple valuation methodology rather than a complicated one. *See, e.g., Union Pac. R.R. v. State Tax Comm'n*, 716 F.Supp. 543, 557 (D.Utah 1988).

The Supreme Court has "long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax admin-

istration." *Nat'l Private Truck Council v. Okla. Tax Comm'n*, 515 U.S. 582, 586, 115 S.Ct. 2351, 2354, 132 L.Ed.2d 509 (1995). Because the states rely so heavily on their ability to tax, "'it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible.'" *Id.* (quoting *Dows*, 78 U.S. (11 Wall.) at 110). When Congress enacted the Tax Injunction Act, it "intended to codify this pre-existing federal equity practice and to ensure more uniform adherence to the underlying principles of comity." *S. Ry.*, 715 F.2d at 527; *see also 28 E. Jackson Enters. v. Cullerton*, 523 F.2d 439, 441 (7th Cir.1975) (Tax Injunction Act "codifies the well-established federal policy of noninterference in matters of state taxation").

The Railroad argues that principles of federalism and comity should play no role in our interpretation of the 4-R Act. This argument is not new. We have stated that "Congress intended to carve out an exception not only to the Tax Injunction Act, but also to the underlying doctrine of equitable restraint in the narrow area of discriminatory taxation of railroads," *S. Ry.*, 715 F.2d at 529, and the Eighth Circuit has stated that "[t]he common law principle of federal deference to state tax schemes, as amplified by 28 U.S.C. § 1341, has no place in a § 306 analysis," *Burlington N. R.R. v. James*, 911 F.2d 1297, 1300 (8th Cir.1990).

The problem with this argument is that more recently the Supreme Court has stated the opposite. In a decision mentioned by neither the Ninth Circuit in *Burlington Northern v. Department of Revenue* nor the Second Circuit in *Consolidated Rail*, the Supreme Court ruled in 1994 that states may grant exemptions from a generally applicable *ad valorem* property tax without subjecting the taxation of railroad property to challenge under subsection (b)(4) of the Act. *ACF Indus.*, 510 U.S. at 335, 114 S.Ct. at 846. The Court reached this conclusion based on the text of the Act, *id.* at

339-43, 114 S.Ct. at 848-50, and then explained, "Principles of federalism support, in fact compel, our view. Subsection (b)(4), *like the whole of § 11503* [now § 11501], sets limits upon the taxation authority of state government, an authority we have recognized as central to state sovereignty," *id.* at 345, 114 S.Ct. at 850 (emphasis added). The Court stated that principles of federalism required the use of a clear statement rule in this context. *Id.* at 345, 114 S.Ct. at 850-51. Because it was not the "clear and manifest purpose of Congress" to allow railroads to challenge property tax exemptions in federal court, the Court refused to read the 4-R Act as granting them that right. *Id.*

Based on the reasoning of the Court in *ACF Industries*, we conclude that railroads may not challenge state valuation methodologies under subsection (b)(1). The text of the Act does not clearly state that railroads may challenge valuation methodologies. Without that clear statement of congressional intent, the argument of the Railroad fails.

The legislative history, "to the extent it has any relevance to our inquiry," *ACF Indus.*, 510 U.S. at 345, 114 S.Ct. at 851, supports the conclusion that railroads may not challenge state valuation methodologies in federal court. The committee report regarding a precursor of section 306 explained that the bill "does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves. It merely provides a single standard against which all affected assessments must be measured." S.Rep. No. 90-1483, app. B, at 22 (1968). The testimony of a railroad representative at a hearing on an earlier version of section 306 was consistent with this interpretation: "The standards and methods of valuation that any State wishes to use would be unaffected by this legislation." *Hearing on H.R. 16245 Before the Subcomm. on Transp. & Aeronautics of the H. Comm. on Interstate & Foreign Commerce*, 91st Cong. 138 (1970) (statement of Philip M. Lanier).

The most that can be said for the argument of the Railroad is that it was articulated ably in the dissenting opinion in *ACF Industries*. Justice Stevens argued that "the text of subsection (b)(4) and its evident purposes convince me that Congress intended to bar discrimination by any means, including exemptions." *ACF Indus.*, 510 U.S. at 350, 114 S.Ct. at 853 (Stevens, J., dissenting). The lower court that the Supreme Court in *ACF Industries* reversed also reached this conclusion. *See id.* at 338, 114 S.Ct. at 847 ("The court [of appeals] explained that Congress enacted § 11503 [now § 11501] to 'prevent tax discrimination against railroads *in any form whatsoever.*'" (citation omitted)). We obviously are not at liberty to follow either Justice Stevens's dissenting opinion or the decision reversed by the Supreme Court. The district court was not allowed to consider a valuation methodology different from the methodology of the Board.

### *B. The District Court Did Not Clearly Err in Finding That the Railroad Used a Valuation Methodology Different From the Methodology of the State.*

The Railroad and an amicus curiae argue, in the alternative, that the appraisal by Tegarden was based on the same methodology used by the State. The American Association of Railroads, as amicus curiae, argues that there is a tri-partite taxonomy of appraisal terminology consisting in unit rule and summation "methodologies"; income, cost, and market "approaches" for determining value under the unit rule; and stock and debt, discounted cash flow, yield capitalization, and other "techniques" for implementing the various approaches. Under this taxonomy, our decision in subsection III.A would bar the Railroad from challenging only the adoption of the unit rule.

Although this taxonomy may be useful within the appraisal community, there is little legal support for this argument. The Association argues that the Fourth Circuit has used the terms "method" and "methodology" in the way it advocates,

. *see Chesapeake W. Ry.*, 938 F.2d at 529, but other courts have used those terms to designate more specific components of the valuation process. *See, e.g., Consol. Rail*, 47 F.3d at 477 (discussing "the 'income capitalization method'" and "the 'stock and debt method'"); *Union Pac. R.R.*, 716 F.Supp. at 551 (referring to "yield capitalization" and "direct capitalization" as different methods and methodologies).

The more serious problem for the Association is that its argument is contrary to the understanding of the Supreme Court. A close reading of footnote 5 of *Burlington Northern v. Oklahoma* establishes that the Supreme Court understands the phrase "accounting methods" to encompass all nonfactual determinations made in the process of appraising a railroad. We quote the text of that footnote as follows, with our emphasis on three key phrases:

> This case therefore does not present the question whether a railroad may, in an action under § 11503 [now § 11501], challenge in the district court the appropriateness of the *accounting methods* by which the State determined the railroad's value, *or is instead restricted* to challenging the *factual determinations* to which the State's preferred accounting methods were applied. Accordingly we express no view on that issue.

481 U.S. at 463 n. 5, 107 S.Ct. at 1861 n. 5 (emphasis added).

This language suggests that there are only two categories in the valuation process, and the Court understood "accounting methods" and "factual determinations" to be exhaustive of all possibilities. It would not make sense to say that railroads, if barred from challenging accounting methods, would be "instead restricted" to challenging factual determinations if there were some third category in the valuation process, such as an "approach" or "technique," as the Association argues. The inability of railroads to challenge accounting methods restricts the railroads to challenging factual determinations.

The term "accounting methods" and the parallel term "valuation methodology" as used by the Supreme Court encompass all nonfactual determinations involved in constructing a valuation process, regardless of how broad or narrow they may be.

The definition of a "methodology" also should be understood in the light of the principles of federalism that govern our interpretation of the 4-R Act. Under the taxonomy advanced by the Association, a railroad would be barred from challenging the decision to use the unit rule, but permitted to challenge the use of a combination of the stock and debt method and a market multiples approach instead of a yield capitalization method and a cost approach. We are reluctant to allow that kind of freewheeling judicial second-guessing, which implicates delicate matters of state policy, *cf. Union Pac. R.R.*, 716 F.Supp. at 557 (explaining what might influence a choice between a direct capitalization and a yield capitalization method), without clear support in the text of the Act. We would expect Congress to state unambiguously its intention to subject states to challenges of both kinds of decisions in federal court.

Based on our understanding of the term "methodology," the district court did not clearly err in finding that the appraisal prepared for the Railroad by Tegarden was based on a methodology different from the methodology used by the State. The State appraised public utilities in 2002 by calculating five values under three different methods and selecting a figure at the low end of the resulting range. Tegarden calculated three values using three methods, only one of which had been used by the State. Instead of selecting a figure at the low end of his resulting range, Tegarden weighted each result, giving primary weight to one of the methods—yield capitalization—not used by the State. Even if the Railroad were able to convince us that the yield capitalization and discounted cash flow methods are alge-

braically the same, this conclusion would not establish that Tegarden used the same valuation methodology as the State. The State did not give primary weight—or any weight—to its discounted cash flow valuation. The selection by the Department of an appraisal amount nearest to the discounted cash flow number did not reflect the conclusion that discounted cash flow was the most accurate of the methods used, only that it was the lowest.

*C. The District Court Did Not Clearly Err When It Accepted the 6.3 Percent Terminal Growth Rate Used by the State.*

Finally, there was no clear error by the district court in its finding that the use of a terminal growth rate of 6.3 percent by the Board, in its discounted cash flow valuation, was acceptable. A factual finding "is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74, 105 S.Ct. 1504, 1511, 84 L.Ed.2d 518 (1985) (internal quotations and citations omitted). We cannot say definitively that the district court made a mistake because its finding rested on issues of expert credibility.

Although the experts employed by the Railroad testified that a terminal growth rate of 6.3 percent was too high, Dickerson explained why he found it to be appropriate, including that 6.3 percent is the long-term growth rate of the gross domestic product. The district court stated that it found the experts of the Railroad to lack credibility on this issue. *CSX Transp.*, 448 F.Supp.2d at 1345. We have previously said that we "should be reluctant to overturn the district court's findings" where those findings are based on "crucial evaluations of witness credibility, particularly where the expert testimony conflicted." *L&C Marine Transp., Ltd. v. Ward*, 755 F.2d 1457, 1461 (11th Cir.1985).

The district court also based its finding on the failure of the Railroad to state what the terminal growth rate should be. *CSX Transp.*, 448 F.Supp.2d at 1345. At most, the testimony of its experts suggested that the Department should have adopted 3.5 percent or 4.5 percent as the terminal growth rate. *Id.* Even then, as the district court found, these rates suffered from the same alleged infirmities as the rate of 6.3 percent chosen by Dickerson, including that the rates would require expenses to become negative. *Id.* Based on this record, the district court did not clearly err.

## IV. CONCLUSION

The judgment of the district court is

AFFIRMED.

FAY, *Circuit Judge*, concurring in part and dissenting in part:

As set forth in the majority opinion, the Railroad raises three issues in this appeal. The majority rejects all three of the Railroad's contentions. I agree that issues two and three have no merit. The district court did not err in finding Tegarden's appraisal was not based upon the same methodology as that used by the Board nor in accepting the 6.3 percent terminal growth rate used by the Board in its discounted cash flow evaluation.

Most respectfully, however, I disagree with the majority's holding that the 4-R Act bars the Railroad from challenging the valuation methodology chosen by the state. As acknowledged by the majority, our sister circuits have split on this issue. This gives me a little concern because in my opinion there is nothing ambiguous or complicated about these statutes.

Congress passed the Tax Injunction Act, 28 U.S.C. § 1341, which federal courts have enforced with great zeal. Congress, just as clearly, enacted the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act), 49 U.S.C. § 11501, to correct a perceived evil; to wit: discriminatory tax practices by the states upon our national rail transportation system. The 4-R Act is a specific exception and excluded from the provisions of the Tax Injunction Act. 49 U.S.C. § 11501(c).

The language of the statute is straightforward and prohibits states from assessing rail transportation property at a value that has a higher ratio to the true market value than the ratio that the assessed value of other commercial and industrial property has to its true market value. If such a variation exists and exceeds five percent, relief may be granted to the railroad.

The only reference dealing with how such may be shown is a sentence that specifies that "the burden of proof in determining assessed value and true market value is governed by State law." 49 U.S.C. § 11501(c). It is apparent from the record in this case that there are many methodologies that can be used in assessing the value of property. No one has suggested that Georgia law approves of some and disapproves of others.[1] Surely a state could not use one method to assess

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[1] A quick glance at some Georgia cases shows that the method of appraising value is often in dispute. See *Rogers v. De Kalb County Bd. of Tax Assessors*, 247 Ga. 726, 279 S.E.2d 223 (Ga.1981), where the plaintiff sought an injunction prohibiting the Board of Tax Assessors from using the published market (i.e., "blue book") value to assess his aircraft and requiring them to value and assess the aircraft on the basis of original cost minus depreciation, the method more commonly employed to value business equipment, furniture and fixtures. The plaintiff argued that aircraft represented tangible property just as business equipment, furniture and fixtures did, and that Georgia law required uniform taxation of property within the same class. The Georgia Supreme Court held that: "it is not '[im]permissible under the uniformity of taxation provision of the constitution to apply different methods of arriving at the fair market value of tangible property.'" *Id.* at 728, 279 S.E.2d 223, (citing *Wade v. Ray*, 234 Ga. 234 (214 S.E.2d 923) (1975)). See also *Chilivis v. Backus*, 236 Ga. 88, 90 (222 S.E.2d 371) (1976), where the Supreme Court of Georgia reviewed a lower court ruling that prohibited the county tax assessor from considering any factor other than actual use in arriving at fair market value. Holding that actual use is a determinative, but not exclusive, factor for determining a property's fair market value, the Court observed that: "[t]he object of the assessors must be to determine the fair market value of the property subject to taxation in the county and the methods employed may be varied if the object is attained." See also *Colvard v. Ridley*, 218 Ga. 490, 128 S.E.2d 732 (1962), where the taxpayer alleged that the tax assessors had taxed their real and personal property according to different methods, violating the state mandate for uniform taxation within a given class of property. The Supreme Court of Georgia held that: "[w]hile tax assessors were permitted a wide range of tools of placing a value on property, they were required to use the same valuation tool when placing a value on property within one class." *Id.* at 491, 128 S.E.2d 732. Finally, see *Inland Container Corp. v. Paulding County Bd. of Tax Assessors*, 220 Ga.App. 878, 470 S.E.2d 702 (Ga.Ct.App.1996), where two corporate

the market value of railroad property and a different method to assess other commercial and industrial property if such resulted in gross discrimination toward the railroad.

As articulated by the Second Circuit, such a situation would be in direct conflict with the clear meaning of the statute:

> 4. Method of Appraisal
>
> Relying primarily on a decision by the fourth circuit in *Chesapeake Western Ry. v. Forst*, 938 F.2d 528 (4th Cir.1991), the SBEA contends that Conrail is bound by the method of appraisal that the SBEA has chosen, and that since it chose to use the cost approach, it is improper to consider any other method of valuation in fixing the "true market value" of Conrail's properties. The *Chesapeake* court viewed the method of appraisal as a matter of state policy that was beyond the reach of the 4-R Act. We do not accept that interpretation of the statute. What the 4-R Act prohibits is discrimination against railroads in the ratios of two sets of numbers: assessed values and true market values of the railroad's property vis a vis those of other commercial and industrial properties. To avoid the prohibited discrimination, the SBEA must apply the same valuation standards and methods to the railroad property as are used on the commercial and industrial properties to which it is compared. If the Act were to be interpreted, as defendants would have it, so that the SBEA could adopt a special appraisal method for railroads alone, then

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landowners challenged their property tax assessments, arguing that the assessors should have considered "existing use" of the property. Noting that it could only judge the sufficiency of the evidence, not its weight, the Georgia Court of Appeals cautioned, "[n]or may we accept or reject any opposing methods of appraisal presented at trial." *Id.* at 881, 470 S.E.2d 702.

> the whole nondiscrimination objective of the statute could be circumvented.

*Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 481-82 (2nd Cir.1995).

Since the objective of any methodology is a determination of *true market value,* a railroad should be allowed to challenge the method used in an attempt to prove that the result of such a method was not the *true market value* of its property. In sum, I agree with Justice Stevens that "the text of (the statute) . . . and its evident purposes convince me that Congress intended to bar discrimination by any means . . ." *ACF Industries*, 510 U.S. at 350, 114 S.Ct. at 853 (Stevens, J., dissenting). If the Railroad can prove that the method used by the state does not result in a fair appraisal of true market value and that the assessed value is in fact at a ratio higher than five percent of the ratio of true market value and assessed value of other commercial and industrial property, it is entitled to relief.

Having said all of this, I have no idea whether in this case the Railroad can meet its burden of proof. Although the district court found the Railroad's expert well qualified, other comments raise serious concerns about the weight that would have been given to the opinions expressed. I simply disagree with the absolute preclusion of any challenge to the methodology used by the state in arriving at the true market value of the Railroad's property.

**APPENDIX B**

UNITED STATES DISTRICT COURT
N.D. GEORGIA
ATLANTA DIVISION

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Civil Action No. 1:02-CV-2634-CAP

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CSX TRANSPORTATION, INC.,
*Plaintiff*,

v.

The STATE BOARD OF EQUALIZATION of the State of Georgia; BART L. GRAHAM, Commissioner of Revenue of the State of Georgia; RUSSELL W. HINTON, State Auditor of the State of Georgia; and RAY J. CRAWFORD, Director of the Georgia State Properties Commission,
*Defendants*.

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Sept. 29, 2005

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*ORDER*

PANNELL, *District Judge*.

The plaintiff, CSX Transportation, Inc. ("CSXT") filed this suit under Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub.L. 94-210, 90 Stat. 54 (Feb. 5, 1976), which is now codified at 49 U.S.C. § 11501 (the "4-R Act"). The 4-R Act confers concurrent jurisdiction on federal district courts to enforce its provisions, so long as "the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." *Id.* § 11501(c). Such jurisdiction lies notwithstanding the Tax Injunction Act of 1937, 28 U.S.C. § 1341, which ordinarily

prohibits district courts from enjoining, suspending or restraining the assessment, levy or collection of taxes under state law where the party may have a plain, speedy, and efficient remedy in state court. *Id.; Southern Railway Co. v. State Board of Equalization*, 715 F.2d 522, 526 (11th Cir.1983).

For the 2002 tax year, the Department of Revenue of the State of Georgia (the "Department") determined that the unit value of CSXT's rail transportation property was $8.2 billion and that the fair market value of CSXT's taxable railroad operating property in Georgia was $514,862,671 (the "Proposed Valuation"). The Department presented that value to the State Board of Equalization for the State of Georgia (the "Board") for approval. The Board approved the Proposed Valuation and issued a Notice of Proposed Assessment dated November 25, 2002.

CSXT makes three claims under the 4-R Act based on the Department's Proposed Valuation. First, CSXT claims that the Proposed Valuation is excessive and discriminatory in that the Department assessed CSXT's rail transportation property for ad valorem tax purposes at a higher ratio of assessed value to true market value than the ratio applicable to other commercial and industrial property in Georgia in violation of 49 U.S.C. § 11501(b)(1). Specifically, CSXT claims that the true market value of its rail transportation property on a unitary basis for the 2002 tax year does not exceed $6 billion, and that the true market value of its taxable rail transportation in Georgia does not exceed $369,253,752. This valuation claim is based primarily on an appraisal done by Mr. Thomas Tegarden, whose credentials are impeccable.

Second, CSXT claims that it has been singled out for discriminatory tax treatment by the defendants for the tax year 2002 in violation of 49 U.S.C. § 11501(b)(4). In particular, CSXT claims the Department's assessment of other centrally-assessed property is not based on the fair market

value of those properties. CSXT also claims that it is the only major centrally-assessed taxpayer in Georgia that suffered a significant tax increase for the tax year 2002.

Third, CSXT contends that the defendants discriminated against it in violation of 49 U.S.C. § 11501(b)(4) because the Department's Proposed Valuation for the tax year 2002 improperly included its intangible property, while the intangible property of all other commercial and industrial taxpayers is excluded from taxation. CSXT argues that the Department's valuation methods improperly compound intangible value, and CSXT urges the court to order the Department to use a yield capitalization approach, which CSXT claims will minimize the inclusion of intangible assets in the Department's valuation.

The matter was tried by the court sitting without a jury from May 16, 2005, through May 25, 2005. The court took the case under advisement pending the filing of post-trial briefs. The following order constitutes the court's findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52.

*Factual Background*

I. *The Parties*

A. *CSXT*

CSXT, the taxpayer in this case, is a Class 1 interstate common carrier by rail that operates in more than 71 counties in Georgia. It is subject to the jurisdiction of the Surface Transportation Board ("STB").

CSXT is a wholly-owned subsidiary of CSX Corporation. CSX Corporation's stock is publicly traded. As of January 1, 2002, CSX Corporation also owned several other subsidiaries including: (1) CSX World Terminals; (2) CSX Intermodal,

Inc.;[1] (3) CSX Lines; (4) CSX Technology, Inc.; and (5) CSX Hotels, Inc.

As of the fiscal year ending December 28, 2001, CSXT accounted for 75% of CSX Corporation's total operating revenues and 78% of its operating income.[2] CSXT's operating revenues for that year alone amounted to $6.082 billion with an adjusted operating income of $803 million.

By the mid-1990's only three Class 1 railroads existed and competed for freight traffic in the eastern half of the United States: (1) Consolidated Rail Corporation ("Conrail"), (2) Norfolk Southern Corporation ("Norfolk Southern"), and (3) CSXT. In August 1998, the STB approved the joint acquisition of Conrail by Norfolk Southern and CSX Corporation. The acquisition included an outright buyout of Conrail's assets by Norfolk Southern and CSX Corporation for approximately $10.5 billion and the assumption of net debt of $1.9 billion.

In June 1999, CSXT began operating portions of Conrail's system. By January 1, 2002, CSXT was operating approximately 42% of the former Conrail system. At that time, CSXT provided rail freight transportation over a network of approximately 40,000 miles of track and 23,000 route miles.[3] CSXT's network included a route through the southeastern United States, including Georgia, as well as a route from the New York/New Jersey area down the east coast to Florida.

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[1] CSX Intermodal ("CSXI") moves trailers or containers on flat cars to trucks. In addition, CSXI operates 33 terminals across the United States. When CSXI moves intermodal traffic over CSXT's system, CSXI pays CSXT a "transfer price" of approximately $350 to $400 million annually for CSXI's use of CSXT's resources and routes.

[2] Operating income is operating revenues minus total operating expenses.

[3] The acquisition of Conrail added 4,400 miles of track to CSXT's rail system in the Northeast United States and Canada.

CSXT's rail transportation property consists of a variety of items, including land, rail, track material, stations, and equipment. CSXT also operates rolling stock and equipment that it leases. During the time period in question, CSXT had between 34,000 and 36,000 employees and operated between 230,000 to 240,000 freight cars on its system.

Maintaining a rail transportation system requires heavy investment in capital expenditures.[4] Mr. Lewis, a Vice President of CSXT, testified that for the calendar years 2000 and 2001, CSXT's total capital expenditures were between $800 and $900 million.

The acquisition of Conrail had a noticeable effect on CSXT's revenues. For example, in 1997, CSXT's unlevered free cash flow was $467 million. In 1998, after the STB approved the Conrail merger, CSXT's unlevered free cash flow plummeted to negative $115 million. In 1999, CSXT' s [sic] unlevered free cash flow again plunged to negative $309 million. By 2000-2001, some efficiencies were beginning to be realized, and CSXT's unlevered free cash flow rose by 154.9% in two years.[5]

Similarly, the Conrail merger also had an effect on CSXT's operating ratio.[6] CSXT's operating ratio prior to the acquisition of Conrail was 75.4%. After acquiring Conrail, CSXT's operating ratio rose to a high of 89.9% and then began to decline again (to a more profitable ratio) in 2001.

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[4] The term "capital expenditure" refers to purchases of depreciable assets with long lives.

[5] In 2001 and 2002, CSXT Surface Transportation had a positive cash flow of around $150 million. Mr. Lewis testified that the positive cash flow was primarily due to real estate sales of $325 million.

[6] The term operating ratio refers to the ratio of operating expenses to revenue.

Although the acquisition of Conrail had a negative effect on CSXT's financial success in the short-run, the evidence at trial showed that it was likely that some efficiencies would be achieved in the future due to the merger. In fact, even CSXT's own expert, Mr. Tegarden, testified that some costs may be eliminated, which would increase future net operating income.

The evidence at trial also showed that railroads face considerable competition from other modes of transportation, such as trucks. Unlike trucks, however, railroads have to pay for and maintain their own infrastructure. Beginning in 1980, this competition steadily forced rates down. Taking trucks off the highways was the stated goal of the Conrail merger. To that end, the Conrail merger created a huge growth opportunity for CSXT. For instance, in 2001, CSXT was able to move 350,000 truckloads of merchandise off the roads and onto their rails.

B. *The Defendants*

The defendants are the Board and its individual members, including Bart L. Graham, the State Commissioner of Revenue.

The appraised and assessed values of most property in Georgia are determined by county boards of assessors. The parties refer to this property as "locally-assessed" property. Pursuant to O.C.G.A. § 48-5-6, most locally-assessed property subject to taxation in Georgia is to be appraised for assessment purposes at its fair market value. After any such nonexempt locally-assessed property in Georgia is appraised at its fair market value, an assessment ratio of 40% is applied to the appraised value to derive the assessed value. It is this assessed value against which property tax is levied and collected.

Companies classified in Georgia as "public utilities" are commonly referred to as "centrally-assessed" taxpayers.

Centrally-assessed taxpayers include railroads, investor-owned electric utilities, investor-owned telephone companies, pipeline companies, and gas distribution companies. The State Revenue Commissioner issues proposed assessments of the operating and non-operating property of public utilities such as CSXT.

The Property Tax Division of the Department annually prepares a proposed assessment of CSXT's railroad transportation operating property for every Georgia county in which CSXT's taxable property is located.

II. *The Department's Proposed Valuation of CSXT*

In Georgia, the procedure for assessing rail transportation property is set forth in O.C.G.A. § 48-2-18. Under that statute, the Board approves an initial, proposed assessment of the taxpayer's property, and certifies that assessment to the counties in which the taxpayer owns taxable property. *Id.* § 48-2-18(c). *See also Telecom USA, Inc. v. Collins*, 260 Ga. 362, 364-65, 393 S.E.2d 235, 238 (1990) (discussing revised Georgia tax assessment procedures); *Colonial Pipeline Co. v. Collins*, 921 F.2d 1237 (11th Cir.1991) (same). Each county must then issue its final assessment to the taxpayer within 30 days; in doing so, "a county may, but is not required to, use the[ ] figures [provided by the Board] as the county's own tax assessment." *Colonial Pipeline*, 921 F.2d at 1240-41.

The Department used the unit rule method to value CSXT's railroad transportation operating property for 2002 ad valorem tax purposes. The unit rule method values the entire operating system of CSXT as a going concern and integrated whole irregardless of where it is located and without functional or geographic division of the whole into its component parts. A unit value determined pursuant to the unit rule method is meant to capture all of the operating assets

of the company whether owned or used. The parties agree that the unit rule method is appropriate under Georgia law.

Gregg Dickerson is the Program Manager in the Public Utilities Section of the Local Government Services Division of the Department. Mr. Dickerson first joined the Department in 1983 and spent ten years doing valuations pursuant to the unit rule method for centrally-assessed public utilities, including railroads. In 1993, he left the Department and went to work for Norfolk Southern railroad as a property tax manager, where his duties included reviewing and negotiating unit values with various states.

In the fall of 2001, Mr. Dickerson was approached by the then-director of the Department, Mr. Larry Griggers, who asked him to return to the Department. Mr. Griggers stated that he was concerned that the public utility digest for Georgia had decreased from 10% to 5% of the total state property tax digest since Mr. Dickerson's departure. Mr. Dickerson agreed to return, but stated that he would not come back for the purpose of "raising the numbers." He would only come back if Mr. Griggers' purpose was to "get[ ] the numbers right." Mr. Griggers agreed and Mr. Dickerson returned to work for the Department in September 2001. Mr. Dickerson was the individual responsible for preparing the valuation worksheets that served as the basis for the Department's Proposed Valuation of CSXT for the tax year 2002.

Applying the unit rule method, Mr. Dickerson first prepared a Railroad Valuation Worksheet. The Railroad Valuation Worksheet calculated CSXT's unit value using three valuation methods: (1) a stock and debt approach, (2) a discounted cash flow ("DCF") approach, and (3) a market

multiple approach. These different approaches yielded the following values:

| | |
|---|---|
| Stock and Debt | $12.022 billion |
| DCF | $8.126 billion |
| Market Multiples[7] | $12.346 billion |
| | $10.769 billion |
| | $8.474 billion |

After coming up with this range of values for CSXT, Mr. Dickerson selected $8.2 billion as the lower limit of what the going concern unit value of CSXT could reasonably be. He then used $8.2 billion as the foundation for the Department's Proposed Valuation.

After determining the unit value for CSXT, Mr. Dickerson then estimated a working capital adjustment of $400 million and deducted that from his unit value estimate of $8.2 billion to eliminate the effect of certain intangible assets. Next, Mr. Dickerson allocated the adjusted unit value estimate of $7.8 billion to the state of Georgia by using the percentage of Georgia road miles to system road miles. For the tax year 2002, the percentage so applied equaled 7.194059%, resulting in an allocated value of $561,136,602 for the state of Georgia.

To arrive at CSXT's proposed taxable fair market value in Georgia, Mr. Dickerson then deducted amounts for motor vehicles, exempt pollution control equipment, and exempt railroad lines. As a result, Mr. Dickerson determined that CSXT's taxable fair market value in Georgia for the tax year 2002 was $514,862,671 and presented this number to the Board.

Following the Board's approval, the Department issued a Notice of Proposed Assessment dated November 25, 2002 (the "Proposed Assessment"), to CSXT and to the counties in

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[7] The market multiple approach yielded three different values because the Department calculated three different "multiples."

which CSXT had taxable property. The Proposed Assessment included three components: (1) the portion of the Department's proposed taxable fair market value of CSXT's operating property in Georgia attributable to each county, (2) the level of assessment that the Board determined each county should use, and (3) a proposed assessment for each Georgia county in which CSXT had taxable property, which was derived by multiplying the county's distributed value by 40% or the prevailing level of assessment in that county.

After this litigation commenced, in November 2003, Mr. Dickerson prepared a complete appraisal of CSXT using essentially the same three valuation methods that he employed with the Proposed Valuation. The purpose of this appraisal was to provide the court with Mr. Dickerson's point estimate of CSXT's unit value, rather than a figure at the lower end of his range of fair market values.

Following the close of fact discovery in this case, Mr. Dickerson prepared a revised full appraisal of CSXT in support of the Proposed Valuation. The only difference between Mr. Dickerson's November 2003 appraisal and the revised appraisal involved a change in the calculation of the cost of equity used in deriving the weighted cost of capital. The range of values Mr. Dickerson arrived at in his second appraisal were:

As should be abundantly clear by this point, in reaching this conclusion, the Court was not persuaded by TKT's alternative arguments that Amgen failed adequately to describe the production of erythropoietin either by use of a human cell line or by activating the otherwise dormant endogenous erythropoietin gene. *See supra* note 51.

| | |
|---|---|
| Stock and Debt | $12.128 billion |
| DCF | $10.960 billion |
| Market Multiples | $12.434 billion |
| | $10.871 billion |
| | $8.986 billion |

Based on this range of values, Mr. Dickerson opined that the fair market system value of CSXT as of January 1, 2002, prior to adjustments for leases was $11 billion. Mr. Dickerson then added $807 million to this value to account for the value of CSXT's operating leases. He ultimately opined that the fair market unit value of CSXT was $11.807 billion.

III. *An Overview of the Parties' Valuation Approaches*

As noted above, in Georgia, as in most states, a railroad's operating property is valued for property tax purposes as a unit. Under the unit concept of value, the fair market value of the railroad is measured by appraising the whole property as a going concern. To determine the unit value of a company, the appraiser must first choose from and apply a variety of valuation methods.

There are three general approaches to valuing a company or property: (1) the sales comparison approach, (2) the income approach, and (3) the cost approach. The standard sales comparison approach determines the value of a property or company by examining and comparing actual sales of comparable properties or companies. Conversely, the cost approach determines the value of a property by totaling the original costs of the various components of the property, and then making adjustments to account for depreciation or obsolescence. The theory behind the income approach is that anyone who buys a company buys it only for the income the company will generate.

Mr. Dickerson's responsibilities in preparing proposed assessments for centrally-assessed property for the tax year 2002 included reviewing the valuation methods that had been used by the Department in the past. As a result of his analysis, Mr. Dickerson made certain changes to the valuation methods used for all centrally-assessed taxpayers subject to the unit rule method. Those changes, which were applied on

an across-the-board basis, included replacing the existing capitalized earnings approach with a DCF model. He also replaced what had been labeled as a direct capitalization approach with a market multiple approach.

For CSXT, Mr. Dickerson used three different valuation methods: (1) a stock and debt approach, (2) a DCF approach, and (3) a market multiple approach. In rough terms, the stock and debt method is a surrogate for the sales comparison approach. It assumes that the value of a company equals all of the outstanding debt owned by that company plus the company's equity. Similarly, the market multiple approach is also a substitute for the sales comparison approach. Under a market multiple approach, the appraiser derives market multiples from the stock prices of companies that are engaged in similar lines of business and compares those multiples with the subject company to determine the value of that company.

Unlike the stock and debt and market multiple approaches, the DCF approach is a version of the income approach. Under the DCF approach, the appraiser makes assumptions to project cash flows for the company for a designated number of years after the assessment date, and then discounts those expected cash flows to their present value. The appraiser then calculates a terminal or reversion value representing the value of the company at the end of the projection period. The total of the discounted cash flows during the projection period and the terminal value gives the appraiser his unit value for the company.

CSXT's valuation expert, Mr. Tegarden, also used three valuation methods to value CSXT: (1) a stock and debt approach, (2) a cost approach, and (3) a yield capitalization approach. The yield capitalization approach is another variation of the income approach. It can perhaps be described

as a cousin of the Department's DCF approach. For example, the Department's DCF model is expressed as:

$$V = \frac{(CF1)}{(1+k)} + \ldots \frac{(CFn)}{(1+k)} + \frac{T}{(1+k)}$$

Cfn = net cash flow for the year n, k = discount rate, T = terminal value, and n = year. Mr. Tegarden's yield capitalization approach is expressed by the formula:

$$V = \frac{I}{r}$$

I = income and r = discount rate.

Mr. Tegarden gave no weight to his stock and debt value, very little weight to his calculations under the cost approach, and primary weight to his yield capitalization value. Using this weighted scale, Mr. Tegarden picked approximately $6 billion as the unit value of CSXT.

*Legal Analysis*

I. *The 4-R Act*

The 4-R Act prohibits a state from "[a] ssess[ing] [sic] rail transportation property at a value that has a higher ratio to [its] true market value . . . than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to [its] true market value. . . ." 49 U.S.C. § 11501(b)(1). The 4-R Act also prohibits states from levying or collecting taxes based on such an assessment, or otherwise discriminating against rail carriers in taxation. *Id.* § 11501(b)(2)-(4). "Assessment" is defined in the 4-R Act as "valuation for a property tax levied by a taxing district." *Id.* § 11501(a)(1).

II. *Burden of Proof*

The burden of proof in a case brought under the 4-R Act is determined by state law. 49 U.S.C. § 11501(c). The 4-R Act

requires a district court to use the burden of proof generally applicable to civil proceedings. *See Burlington Northern Railroad Co. v. Bair*, 766 F.2d 1222, 1226 (8th Cir.1985); *Atchison, Topeka, and Santa Fe Railway v. Lennen*, 732 F.2d 1495, 1500 (10th Cir.1984). In Georgia, a preponderance of the evidence is "the essential quantum of evidence . . . necessary to satisfy the minds of the fact finders in civil cases." *Ocean Accident & Guarantee Corp. v. Bates*, 104 Ga.App. 621, 622, 122 S.E.2d 305, 307 (1961). Thus, CSXT' s [sic] burden is the preponderance of the evidence standard.[8]

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[8] The defendants contend that the court must accept their tax assessment as prima facie correct, and that the burden is on CSXT to show that their assessment is in error. The defendants' argument is based on their belief that the burden of proof applicable in this case is the same burden of proof used when a taxpayer litigates the assessment they received in Georgia. This is not, however, a case where CSXT is simply appealing the Department's assessment. This is a case brought under the 4-R Act and the court must determine the true market value of CSXT. CSXT, in turn, has the burden of proving by a preponderance of the evidence that the true market value of its property is $6 billion. To do this, CSXT presented two types of evidence. First, it criticized the Department's calculations. Second, it presented a valuation of its property by Mr. Tegarden. In a more typical case, the court would look at both Mr. Tegarden's appraisal and the Department's appraisal to determine the true market value of CSXT. If the court found by a preponderance of the evidence that CSXT's true market value was $6 billion, as proposed by CSXT, then the court would compare the Department's Proposed Valuation to CSXT's true market value to determine if discrimination occurred. However, as explained later in this order, the court cannot consider Mr. Tegarden's valuation because it was prepared using different valuation methods than the Department. The court, therefore, is limited to looking solely at CSXT's criticisms of the Department's valuation.

III. *Whether the Department Assessed CSXT's Operating Property in Georgia for the Tax Year 2002 in Excess of its True Market Value, Resulting in a Ratio of Assessed Value to True Market Value for CSXT's Property which Exceeds by More than 5% the Ratio of Assessed Value to True Market Value of Other Commercial and Industrial Property in Georgia*

A. *May CSXT Challenge the Department's Chosen Valuation Methods?*

In this case, the parties disagree over the proper way to calculate the value of CSXT under each valuation method. Significantly, the parties also disagree over which valuation method the Department should use to value CSXT.

One of the problems with subjecting complex issues like valuation to judicial determination is that the court generally must choose among the competing claims of experts. Unless the court performs its own appraisal, the court must rely either on CSXT's experts or the Department's experts. The court, of course, may adjust an expert's appraisal up or down based on other experts' critiques of the appraisal, but the starting point for judicial determination is always one appraisal or another, and each appraisal is based on a particular methodology that, to a large extent, predetermines the result. Thus, implicit in the court's holding is a decision as to the proper valuation method.

The evidence shows that all five approaches used by CSXT and the Department, the yield capitalization, DCF, stock and debt, market multiple, and cost approaches, are widely used to value property. The question, then, is whether the Department is free to choose among accepted valuation methods or whether the 4-R Act compels the use of one particular method.

The United States Supreme Court in *Burlington Northern Railroad Co. v. Oklahoma Tax Commission*, 481 U.S. 454,

463 n. 5, 107 S.Ct. 1855, 1861 n. 5, 95 L.Ed.2d 404 (1987), expressly left open the question of "whether a railroad may, in an action under [the 4-R Act], challenge the appropriateness of the accounting methods by which the state has determined the railroad's value, or is instead restricted to challenging the factual determinations to which the state's preferred accounting methods were applied." *Id.*

Since the *Burlington Northern* decision, several courts have answered this question. Perhaps the most followed decision is the Fourth Circuit's decision in *Chesapeake Western Railway v. Forst*, 938 F.2d 528, 533 (4th Cir.1991), *cert. denied*, 503 U.S. 966, 112 S.Ct. 1577, 118 L.Ed.2d 220 (1992). *See also Burlington Northern Railroad Co. v. Bair*, 815 F.Supp. 1223, 1228-29 (S.D.Iowa 1993) (following *Chesapeake* and holding that a railroad may not challenge the state's chosen methodology); *cf. Union Pacific Railroad Co. v. State Tax Commission of Utah*, 716 F.Supp. 543, 556-57 (D.Utah 1988) (holding that as long as the state's method has a rational basis and was not chosen for a discriminatory purpose, the court will not disturb the state's choice). In *Chesapeake*, the railroad brought an action challenging Virginia's "over the fence" method of valuing railroad property and arguing for use of the unit method. *Chesapeake*, 938 F.2d at 530. Relying primarily on the 4-R Act's legislative history, the Fourth Circuit concluded that the 4-R Act "does not provide a basis for railroads to challenge a state's preferred methodology for ascertaining the true market value of railroad property." *Id.* at 533; *see also Richmond, Fredericksburg & Potomac Co. v. Forst*, 4 F.3d 244, 250 (4th Cir.1993) ("[A] railroad may present independent evidence of the fair market value of its property, provided, of course, that it limits its evidence to factors that may properly be taken into account under the state's chosen methodology.").

As support for its argument that the court should allow it to challenge the Department's valuation methods, CSXT cites to

decisions from the Second and Ninth Circuit. Neither of these circuits, however, allowed a railroad to freely challenge the state's methodology. For instance, in *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 482 (2d Cir.1995), the Second Circuit held that the state must apply the "same valuation standard and methods to the railroad property as are used on the commercial and industrial properties to which [the railroad] is compared." The implicit holding in *Hyde Park*, therefore, is that a railroad cannot challenge the state's valuation methods as long as the state uses the same methods for other commercial taxpayers. Here, the evidence at trial showed that the Department used essentially the same valuation methods for CSXT that it used for other centrally-assessed taxpayers.

Similarly, while the Ninth Circuit allowed a railroad to challenge the state's chosen methodology, it also held that the state's chosen methodology is presumed correct and can be defeated only by clear, cogent, and convincing evidence. *Burlington Northern Railroad v. Department of Revenue of the State of Washington*, 23 F.3d 239, 241 (9th Cir.1994).

Although the Eleventh Circuit has yet to address this question, the court finds that the legislative history, which is admittedly rather thin, supports the Fourth Circuit's determination that the 4-R Act does not confer jurisdiction upon this court to order the Department to use a specific accounting method to determine the value of CSXT. The committee report on Senate Bill 927, one of several precursors to the 4-R Act, states that:

> [The bill] does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves. It merely provides a single standard against which all affected assessments must be measured in order to determine their relationship to each other. It is not a standard for determining value; it is a

> standard to which values that have already been determined must be compared.

S.Rep. No. 1483, 90th Cong., 2d Sess.App. B (1968).

Similarly, in hearings on House Bill 16245, another forerunner of the 4-R Act, Mr. Lanier, a railroad representative, testified that, "[t]he standards and methods of valuation that any state wishes to use would be totally unaffected by this legislation." *Chesapeake*, 938 F.2d at 531 (*citing* Hearing Before the Subcommittee on Interstate and Foreign Commerce on H.R. 16245, 91st Cong., 1st Sess. 138 (1970)). Thus, the legislative history suggests that the statute was not meant to require a state to use a particular accounting method, at least as long as the state's chosen methods are rational and were not chosen for a discriminatory purpose.

After eight days of trial, it is apparent to the court that valuation is an art, not a science. Valuing a business requires an appraiser to make "judgment calls," even under CSXT's yield capitalization method. Absent a willing buyer and a willing seller, the determination of true market value for purposes of ad valorem taxation is always an estimate, always an expression of judgment, and always a result built on "judgment calls." The appraisals in this case are good examples of this. Mr. Tegarden and Mr. Dickerson each used at least three different valuation methods to arrive at the market value of CSXT. Both Mr. Tegarden and Mr. Dickerson arrived at different conclusions as to the value of CSXT under each method that they utilized. For example, CSXT's own expert, Mr. Tegarden, arrived at the following three values for CSXT for the tax year 2002:

| | |
|---|---|
| Cost Approach | $6.150 billion |
| Income Approach | $5.983 billion |
| Stock and Debt Approach | $9.637 billion |

The $3 billion difference in Mr. Tegarden' s values makes clear that the determination of the true market value of CSXT in this case is, at best, an educated guess. The fact that the determination of CSXT's true market value is an educated guess weighs against the court requiring the Department to use a particular valuation method.

In addition to the fact that all appraisals are at best educated guesses, the court is unwilling to dictate a particular valuation method to the Department for other reasons. From the testimony of the Department's witnesses, the court concludes that the Department sincerely seeks to arrive at what it considers to be CSXT's true market value, and that, to that end, it constantly reevaluates its methods and changes them when the Department becomes convinced that they are erroneous. If this court were to conclude that the 4-R Act required the Department to adopt the yield capitalization method of valuation, it would prevent the Department from critically examining its appraisal methods and would discourage it from adopting new and better methods as they become accepted by the appraisal profession.

For all of these reasons, the court concludes that the 4-R Act does not generally allow a railroad to challenge the state's chosen methodology. As long as the Department's chosen valuation methods are rational and were not chosen for the purpose of discriminating against CSXT, the court will not second guess the Department's choice of methods.

Even if the court were forced to choose between competing valuation methods, the court finds that the Department's chosen methods have much to commend them. Not only does the Department consistently use essentially the same approach for all centrally-assessed property, but its valuation methods are based on historical and market data readily available to investors and to the defendants. All three of the Department's valuation methods are widely accepted and used by valuation experts. The fact that these methods are

widely used and accepted is evidenced not only by the testimony of the majority of experts, but also by the fact that they have been approved by other courts. *See, e.g., Bair*, 815 F.Supp. at 1228-29 (approving of the use of the stock and debt approach to valuing the BN railroad); *Burlington Northern Railroad Co. v. Department of Revenue of the State of Washington*, No. C90-5417, 1992 WL 201947, at *4-5 (W.D.Wash. Aug.13, 1992), *aff'd* 23 F.3d 239 (9th Cir.1994) (giving deference to the state's use of the stock and debt, DCF, and cost approaches).

(1) *Whether the Department's Chosen Valuation Methods Are Irrational*

The court finds that the Department's chosen valuation methods are rational. As noted above, the stock and debt approach, market multiple approach, and DCF approach have much to commend them. They are widely accepted and generally based on historic and market data readily available to the public and investors.

CSXT' s primary criticism of the Department's valuation methods is that they compound intangible values at a higher rate than CSXT's yield capitalization method does. For example, CSXT introduced testimony showing that stock prices include value attributable to intangible property. Because all three of the Department's valuation methods utilize stock prices derived from CSX Corporation, CSXT's parent company, CSXT argues that the Department's approaches are flawed.

The court agrees that stock prices include intangible value, whether it is "intangible influences" or "intangible property." By extension, therefore, any approach that utilizes stock prices includes some intangible value. Nevertheless, the fact that the Department's approaches include intangible value does not make their use irrational. Both parties' experts agree that the fair market value of a business is meant to

value what a willing buyer would pay for that business. Stock prices, thus, are particularly relevant for appraisal purposes because absent a recent sale of the business, the company's stock price is the only real example of what a willing buyer would pay for a share of that business.

The court also points out that CSXT's own valuation methods are not exempt from the same criticism. It is undisputed that CSXT's yield capitalization method relies to some extent on stock prices and includes at least some value attributable to intangible property.

(2) *Whether the Department's Chosen Valuation Methods Were Adopted for a Discriminatory Purpose*

The court also finds that the evidence at trial does not support the conclusion that the Department selected the DCF approach, the stock and debt approach, or the market multiple approach for the purpose of discriminating against CSXT. The evidence at trial showed that the Department utilizes essentially these same methods when valuing non-railroad centrally-assessed property.

Accordingly, the court concludes that CSXT cannot challenge the Department's chosen valuation methods in this case. This ruling, of course, does not prevent CSXT from challenging the manner in which the Department calculated the value of CSXT using its stock and debt, DCF, and market multiple approaches.

B. *Can the Court Consider Mr. Tegarden's Appraisal of CSXT?*

The court is required to weigh the evidence and make its own factual findings regarding the true market value of CSXT. The question then arises as to whether the court can consider evidence of the true market value of CSXT' s [sic] operating property determined by a valuation method not employed by the Department. The court finds that it cannot

do so in this case because the valuation methods chosen by the Department are rational and were not adopted for a discriminatory purpose.

The court must make its factual findings as to the value of CSXT using the methods utilized by the Department. Otherwise, the court will be, in effect, ordering the Department to use a different valuation method.

It is undisputed that the Department used a DCF approach, a stock and debt approach, and a market multiple approach to value CSXT. CSXT's expert, Mr. Tegarden, appraised CSXT using a yield capitalization approach, a stock and debt approach, and a cost approach. Mr. Tegarden testified that he placed no weight on his calculations under the stock and debt approach and little emphasis on his calculations under the cost approach. Therefore, the court concludes that Mr. Tegarden's appraisal is based primarily on the yield capitalization approach with some small emphasis on the cost approach.[9]

The court concludes that both the cost approach and the yield capitalization approach are different valuation methods than the Department's valuation methods. Although the yield capitalization approach is undoubtedly a cousin of the Department's DCF approach, the fact that it is truly a different valuation method is most aptly illustrated by the fact that CSXT spent much of its time at trial arguing that the court should order the Department to adopt the yield capitalization approach because the other methods used by the Department to value CSXT were flawed.

Because the yield capitalization and cost approaches are different valuation methods than the methods used by the

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[9] CSXT admits that the cost approach is not particularly reliable for use in valuing railroad assets because of the substantial obsolescence affecting railroad property. Pl.'s Post-Trial Br. at 22 [Doc. No. 113].

Department, the court cannot consider Mr. Tegarden's valuation of CSXT under these approaches. Since CSXT has introduced into evidence no other appraisal of its property using the valuation methods employed by the Department, the court must necessarily limit its analysis to the criticisms presented by CSXT as to the manner in which the Department calculated the value of CSXT under its DCF, stock and debt, and market multiple approaches.

C. *The Department's Appraisals*

Before the court reaches CSXT's criticisms of the Department's calculations, the court must first address the two appraisals created by the Department after the commencement of this litigation. As noted earlier, after this litigation commenced, the Department prepared two appraisals of CSXT. The purpose of these appraisals was to provide the court with Mr. Dickerson's point estimate of CSXT's unit value, rather than a figure at the lower end of his range of fair market values. The only difference between the two appraisals was a change in the calculation of the cost of equity used in deriving the weighted cost of capital.

The fact that the Department created two appraisals significantly complicates this case. The Department urges the court to disregard its original Proposed Valuation and hold that the actual fair market unit value of CSXT is $11.807 billion, which is the value derived from Mr. Dickerson' s [sic] revised appraisal. CSXT, however, focused the majority of its time at trial and in its post-trial briefs challenging the Department's Proposed Valuation.

The court has considered the Department's revised appraisal. As noted earlier, in its revised appraisal, the Department changed the way it calculated the cost of equity used in deriving the weighted cost of capital for CSXT. It appears to the court that the Department created this new method of calculating the cost of equity in late 2003 or early 2004 and,

thus, did not apply this formula to any other taxpayer in 2002. The court questions the relevancy of the revised appraisal for use in this lawsuit. The methods used were not applied to other taxpayers for the year 2002, and the revised appraisal was not used by the Department in assessing the values at issue here. The controversy before the court is the methods and the amounts used, not what could have been used. The court's analysis and approval (or disapproval) of the revised appraisal essentially amounts to an "advisory" opinion. Further, applying this new method of calculating the cost of equity to CSXT when it was not used for any other taxpayer would be inherently discriminatory. Accordingly, the court will focus the remainder of this order on the Department's Proposed Valuation.

D. *CSXT's Criticisms of the Department's Calculations*

As noted above, the Department utilized three methods for determining the fair market value of CSXT: (1) the stock and debt approach, (2) the DCF approach, and (3) the market multiple approach. Each of these approaches yielded a different unit value for CSXT. From this range of values, Mr. Dickerson then chose a number, $8.2 billion, that was closest to the lowest value in that range. The $8.2 billion unit value became the foundation for the Department's Proposed Valuation.

CSXT challenges the calculations made by Mr. Dickerson under his Proposed Valuation on four grounds. First, CSXT claims that the Department made errors in its DCF analysis. Second, CSXT claims that the Department calculated excessive stock and debt figures. Third, CSXT claims that the Department utilized excessive market multiple figures. Finally, CSXT claims that the Department improperly double-counted the value of CSXT's leased equipment.

(1) *CSXT's Criticisms of the Department's DCF Analysis*

To arrive at the DCF value of CSXT, the Department first calculated CSXT's anticipated future operating free cash flows for a ten-year period from 2002 to 2011 based on projections regarding the growth rate of CSXT's revenues, expenses, and capital expenditures. The Department then calculated a terminal value for CSXT (i.e., what a purchaser would expect to pay for the company at the end of the period). Next, the Department discounted this cash flow to January 1, 2002, using as the discount rate a 9.90% after-tax average weighted cost of capital. This calculation yielded a figure of $7,518,317,142, to which the Department added an amount for leased equipment of $607,976,209 to come up with a DCF value of CSXT of $8,126,293,350.

In particular, the Department's DCF model projected an increase in CSXT's cash flow of 69% from 2001 to 2002. The Department's model also projected a declining growth rate in cash flows from 5.32% in 2003 to 3.58% in 2011 and then assumed a constant terminal growth rate of 6.3% from 2011 into perpetuity. In addition, the Department assumed a 2% growth in revenues per year and projected that CSXT could achieve an 80% operating ratio by 2011.

According to CSXT, several of the assumptions in the Department's DCF model are erroneous because they allegedly have no basis in the historic record of CSXT's performance. In particular, CSXT claims that the Department erroneously projects: (1) a 69% increase in cash flow from 2001 to 2002, (2) a 6.3% terminal growth rate, and (3) an operating ratio of 80% by 2011. CSXT argues that these allegedly erroneous financial projections cause the Department's DCF model to overstate the value of CSXT.

(a) *The Department's Selection of 69% as the First Year's Cash Flow*

As noted above, the first year of the Department's DCF model assumes that CSXT's cash flow will increase by 69% over CSXT's actual cash flow for 2001. CSXT argues that this increase is bizarre and unsupported by the record. CSXT, however, introduced no evidence at trial as to what increase, if any, the Department should have projected or how that change would have affected the Department's value. In fact, instead of presenting testimony as to what the percentage increase or decrease the Department should have used and how changing that number affects the Department's DCF value for CSXT, CSXT argued that the court should correct the Department's projected terminal growth rate.

Regardless, the court finds that a 69% increase in projected cash flow from 2001 to 2002 is not bizarre. The evidence at trial showed that CSXT' s [sic] cash flow from 1991-2001 increased annually from 5.6% to 154.9% and sometimes declined. In fact, from 2000 to 2001, CSXT's unlevered free cash flow increased by more than 100%. Furthermore, as noted by CSXT' s [sic] expert at trial,[10] it is likely that some efficiencies may be achieved in the future due to the integration of CSXT and Conrail. These efficiencies will likely increase cash flow and reduce costs.

(b) *The Department's Selection of 6.3% as the Terminal Growth Rate*

CSXT next argues that the Department's decision to choose 6.3% as the terminal growth rate is excessively optimistic. CSXT points out that 6.3% is much higher than the growth rate that the Department projected for the years 2003-2011.

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[10] This statement was made by Mr. Tegarden in the context of explaining how he came up with $700 million as his estimate of CSXT's future net operating income.

CSXT also argues that the logical incongruence of the Department's terminal growth rate is indicated by the fact that the Department estimated that CSXT' s [sic] revenue would grow at only 2%. CSXT points out that if revenue grows at only 2%, while free cash flow (roughly revenue minus expenses) grows at 6.3% then at some point in time expenses would have to decline and become negative to sustain the 6.3% growth in free cash flow.

The court finds that the Department's decision to adopt a 6.3% terminal growth rate is not erroneous. First, to the extent that CSXT's experts opined that 6.3% was an unrealistic terminal growth rate, the court finds that their testimony was not credible. Second, the court notes that none of CSXT's experts testified as to what a proper terminal growth rate should be. At most, these experts suggested that the Department should have adopted 3.5% or 4.5% as the terminal growth rate. These "suggested" rates also suffer from some of the same infirmities that the rate selected by the Department does. For example, if revenues grow at 2%,[11] but free cash flow grows at any number higher than 2% (e.g., 3.5% or 4.5%) then eventually costs will have to decrease to a negative number.

(c) *The Department's Projected Operating Ratio*

CSXT also criticizes the operating ratio forecasted in the Department's Proposed Valuation. CSXT points out that it did not achieve its planned operating income or ratio from June 1999-December 2002. CSXT also presented evidence from Mr. Lewis, CSXT's Vice President of Finance, that the

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[11] Because the growth rate for revenue slowed to .4% per year from 1996 to 2001, CSXT also argues that the Department's projected growth rate of 2% per year for revenue is unduly optimistic. The court disagrees. CSXT admits that a 2% annual growth in revenue is not inconsistent with national trends for railroads between 1991 and 2001.

business risks facing the railroad industry make it "difficult to imagine . . . hav[ing] a lower operating ratio."

While it is true that CSXT did not achieve its planned operating ratios from 1999-2002, this fact alone does not indicate that the target operating ratios predicted by the Department were erroneous. Among other things, the Department estimated that CSXT would achieve an operating ratio of 80% by the year 2011. Eighty percent is consistent with CSXT' s strategic plan, its presentations to bond rating agencies, and the average historic operating ratios achieved by railroads, including CSXT, from 1995-2001. In fact, in 1998, prior to CSXT's acquisition of Conrail, CSXT achieved a 78.6% operating ratio. By 2001, CSXT's operating ratios had begun to decrease from a high of 89.9% in 2000. CSXT's 2001 Annual Report noted this change in trend stating, "With revenues expected to go up this year, the railroad's operating ratio, i.e., total costs as a percentage of total revenues, should improve considerably." Thus, it was reasonable for the Department to project that CSXT would achieve an operating ratio of 80% by the year 2011.

(2) *CSXT's Criticisms of the Department's Stock and Debt Analysis*

The Department determined the stock and debt value of CSXT by taking normalized year-end price data from Standard & Poor's Stock Guide and information from CSX Corporation's 2001 Annual Report. The Department concluded that the total market value of CSX Corporation's stock, its long-term debt, and the excess of current liabilities over current assets as of January 1, 2002, was $15,219,745,138. The Department next performed several calculations to determine what portion of this total was properly attributable to CSXT. The ratios the Department calculated were: 74. 91%, 81. 89%, 77. 93%, and 75. 47%. The Department selected 75% as a conservative number within that range. The Department then multiplied

$15,219,745,138 by 75% to come up with the portion of CSX Corporation's debt and equity which was allocable to CSXT. After adding $607 million for leased equipment, the Department arrived at $12,022,785,209 as the stock and debt value of CSXT.

In CSXT' s post-trial brief, CSXT points out a host of problems with the stock and debt approach generally, as opposed to problems with the Department's calculation of CSXT's stock and debt value. For example, CSXT argues that there is a disconnect between stock and debt values and the value of the taxable assets being valued in this case. CSXT points out that a company's stock price inevitably includes intangible values and assets not in existence on the date of the assessment, whereas an appraiser is only supposed to value tangible operating assets that are in existence as of the date of the appraisal.

As the court has previously indicated, it was proper for the Department to use the stock and debt approach to come up with a range of values for CSXT. *See Bair*, 815 F.Supp. at 1239 (approving of the use of the stock and debt approach in the appraisal of a railroad). The court, moreover, has already held that CSXT may not challenge the Department's chosen valuation methods.

In addition to criticisms of the stock and debt approach generally, CSXT argues that the stock and debt approach is not appropriate in this case because CSXT is not a publicly traded company. Although the stock of CSX Corporation is publicly traded and CSXT is wholly-owned by CSX Corporation, CSXT claims that it is difficult to identify a stock value attributable to CSXT' s [sic] railroad assets.

The court finds this argument unpersuasive. The mere fact that the Department must calculate and allocate a portion of CSX Corporation's stock to CSXT does not justify rejecting the Department's stock and debt value. Notably, CSXT does

not argue that the Department allocated the wrong proportion of CSX Corporation's equity to CSXT. In fact, it appears to the court that the parties agree that CSXT constitutes between 75-80% of CSX Corporation's total equity. CSXT's own expert, Mr. Tegarden, attributed 78.9% of CSX Corporation's total equity to CSXT when he calculated the discount rate in his yield capitalization approach.[12]

CSXT's final argument is that the Department erred by failing to make an adjustment to reflect the liquidity of stocks, as opposed to assets. CSXT points out that it is easier to buy a few units of stock, as opposed to the entire operating assets of a railroad. Because it is easier to buy stock, shares of stock reflect a liquidity premium that is not shared by the hard assets of a company.

Even if the court were to conclude that CSXT was correct, CSXT failed to present any expert testimony attesting as to how large an illiquidity discount the Department should have applied. At most, Mr. Tegarden' s [sic] report suggests that an illiquidity discount plus an adjustment for minority interests of 37.5% may be appropriate.[13] Pl.'s Ex. 1 at 60, n.

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[12] In other parts of its brief, CSXT suggests that the Department may have miscalculated the amount of debt attributable to CSXT. Even if the court were to accept this criticism, as well as CSXT's liquidity criticism described later in this opinion, according to the court's calculations the unit value of CSXT would be approximately $7.6 billion. This number is much higher than the $6 billion value proposed by CSXT.

Further, the court notes that the value of CSX Corporation's debt is $8.296 billion. If the court were to attribute 75% of CSX Corporation's debt to CSXT, the value of CSXT would be $6.2 billion. If, as CSXT claims, the value of CSXT was $6 billion, CSXT would have a negative equity value. CSX Corporation, however, held investment grade bond ratings implying a profitability level in excess of that needed to pay both current interest expenses and the principal balance of debt.

[13] If the court were to assume that CSXT's stock has a value in the market that is 37.5% higher than its underlying assets, according to the court's calculations the Department's stock and debt value of CSXT

46 ("Some studies have suggested that the effect of these two adjustments would be a reduction of the stock prices by approximately 37.5%."). This statement, however, is not specific to CSXT, nor does the court construe it as Mr. Tegarden's opinion regarding the actual illiquidity discount that should be applied to CSX Corporation's stock. In fact, Mr. Tegarden failed to include an illiquidity discount when arriving at his own stock and debt value.[14]

Nor is the court convinced that an illiquidity discount should be applied here. While stocks are undoubtedly more liquid than the entire operating assets of CSXT, buying the entire operating assets of a company gives the purchaser something that buying a few shares of stock cannot give him: control. One of CSXT's experts, Dr. Heaton, testified that an acquiring company will sometimes pay a control premium when the acquiring company believes that they can add value (create synergy) to the existing company. To the extent that any illiquidity discount may have been necessary, it may also have been completely offset by the necessity of adding a control premium.

(3) *CSXT's Criticisms of the Department's Market Multiple Analysis*

For the Department's market multiple approach, the Department identified six comparable railroads: (1) Burlington Northern, (2) Canadian National, (3) Canadian Pacific, (4) CSX Corporation, (5) Norfolk Southern, and (6) Union Pacific. The Department then multiplied the number of shares for these railroads by their year-end stock price to come up with the value of their equity. Next, the Department

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would be approximately $9.3 billion, much higher than Mr. Tegarden's $6 billion value for CSXT.

[14] In his appraisal report, Mr. Tegarden valued CSXT under the stock and debt approach at $9.637 billion. He testified that he gave little to no weight to this value because it did not include an illiquidity discount.

totaled the book value of the debt of these railroads, added the value of their equity, and subtracted cash items to derive each railroad's total market capitalization number. The Department then divided the total market capitalization number for each railroad by three different measures of income: revenues, EBIT,[15] and EBITDA.[16] This resulted in "multiples," which the Department applied against the same measures of income for CSXT to estimate the value of CSXT. The Department's market multiple values of CSXT were: (1) $12,246,460,000; (2) $10,769,011,960; and (3) $8,474,781,660 respectively.

CSXT primarily complains that the Department's calculation of its market multiple values is erroneous because the Department failed to make adjustments to its calculations to account for differences between these companies and CSXT. For example, CSXT argues that the Department failed to account for differences between the size of the comparator railroads and CSXT, whether they are eastern or western railroads, and the total amount of their assets. According to CSXT, if the Department had made the appropriate adjustments to reflect the differences between those railroads and CSXT, the appropriate market multiple value of CSXT would be approximately $6.08 billion.

Although the court applauds the Department's use of publicly traded Class 1[17] major railroads as comparable companies, the court finds that the Department erred when it failed to make adjustments to the size of the comparator companies. CSXT, however, has failed to introduce

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[15] "EBIT" stands for "earnings before interest and tax."

[16] "EBITDA" stands for "earnings before interest, tax, and depreciation."

[17] As noted by Mr. Tegarden, the two Canadian railroads, Canadian National and Canadian Pacific, have enough revenue to be considered Class I railroads if they were U.S. companies.

sufficient evidence for the court to determine what the appropriate adjustments should have been. At trial, CSXT introduced into evidence Plaintiff's Exhibit 51, which purports to adjust the values of Burlington Northern, Norfolk Southern, and Union Pacific to account for their size in comparison to CSXT. In addition to the fact that it does not make adjustments for all of the railroads used by the Department, it is not clear to the court whether the exhibit properly adjusts CSXT' s [sic] size to account for the purchase of Conrail. Nevertheless, because the Department erred in calculating its market multiple approach, the court will disregard the values the Department arrived at under its market multiple approach.

(4) *CSXT's Criticisms of the Department's Add-Back to Account for CSXT's Leased Equipment*

CSXT, like most railroads, leases substantial numbers of "rolling stock," such as locomotives and freight cars. The Conrail transaction was also structured using leases. CSXT uses operating leases to pay for various Conrail road assets. To account for this leased equipment and the Conrail road assets, the Department added $607 million to the unit value of CSXT under each of its valuation methods.

According to CSXT, the addition of $607 million to account for CSXT's leased assets is unnecessary because the Department's unit value of CSXT under all three valuation methods includes the value of all operating property owned or used by CSXT, including its leased assets. CSXT also argues that if the Department was going to treat CSXT's leased assets as if they were owned, the Department should have recognized that CSXT's capital expenditures would have increased if CSXT purchased its leased assets. If capital expenditures increased, then CSXT's cash flow would have been lower. The failure to make this adjustment to capital expenditures results in double counting the value of the leased assets.

In response, the Department points out that CSXT's operating leases are off-balance sheet financing. Because the operating leases do not show up on CSXT's balance sheet, the full value of the operating leases are not captured in CSXT's stock and debt prices or in the Department's income approach, unless certain adjustments are made.

After much deliberation, the court concludes that the Department did not improperly double count CSXT's leased assets. In particular, the court finds Dr. Ifflander and Mr. Dickerson's testimony on this issue credible.

There are two types of leases: capital leases and operating leases. A capital lease generally lasts for the life of an asset and the lease can be renewed at the end of the asset's life or the asset may be acquired at a favorable price. An operating lease usually lasts for a period of time much shorter than the actual life of the asset, and the present value of lease payments is generally much lower than the actual price of the asset. At the end of the life of the operating lease, the equipment usually reverts back to the lessor.

Under standard accounting rules, a capital lease is treated like a purchase. It shows up on a company's books as an asset, and the lease obligations show up as a liability or debt. Operating leases, on the other hand, do not show up on a company's books as an asset or a debt—they are off-balance sheet.[18] Instead, payments for operating leases show up as cash outflows from operations.[19]

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[18] The term "off-balance sheet" debt has been the focus of much attention in the last few years due to the Enron scandal. One of the principal ways in which Enron was able to deceive investors as to its value was by engaging in extensive off-balance sheet financing transactions, which shifted debt off Enron's balance sheet, making the company's balance sheet look far stronger than it actually was. *See* Lawrence E. Mitchell, *The Sarbanes-Oxley Act and the Reinvention of Corporate Governance?* Vill. L.Rev. 1189, 1212 (2003).

[19] "Off-balance sheet financing has been used for many years as a source of capital financing for acquiring heavy equipment, especially

When a lease arrangement is treated as off-balance sheet financing, the court is satisfied that there are "real current or future cash flow consequences." *See* 1 D.R. Carmichael & Paul Rosenfield, ACCOUNTANTS' HANDBOOK 33 (10th ed.2003). There are also consequences for reported earnings, book value of debt and capital, and return ratios for the company. The court finds that operating[20] and net income are lower, debt and capital for the firm are understated, and return on equity and capital are much higher. Unless an adjustment is made to the income statements to treat CSXT's leased Conrail road assets as if they were owned, the estimated market value CSXT will be understated.[21] In this case, the Department properly made such an adjustment—$607 million

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aircraft. . . ." John C. Murray, *Recharacterization and Title Issues in Synthetic Leasing Transactions*, 479 Practicing L. Inst./Real Est. Handbook 889 (2000).

[20] Operating income is a key input in both parties' valuation methods, but especially the DCF method.

[21] The court is aware of the fact that the Southern District of Iowa in *Burlington Northern Railroad Co. v. Bair*, 815 F.Supp. 1223, 1231 (S.D. Iowa 1993), reached a seemingly different conclusion. Although the *Bair* decision is not binding upon this court, the court points out that the *Bair* court's analysis on this issue is rather perfunctory. Further, in *Bair*, the court appears to have held that because commercial and industrial personal property is exempt from taxation, adding it back to the state's unit value estimations improperly double-counts the value of the leased rolling stock. *Id.* at 1231. In Georgia, however, taxable property is defined as "all real property, including but not limited to leaseholds, interests less than fee, and all personal property. . . ." O.C.G.A. § 48-5-3. Furthermore, Georgia law also states that a railroad's rolling stock and other personal property appurtenant to the rolling stock shall be taxed on "as much as the whole value of the rolling stock and personal property as the length of the railroad in this state bears to the whole length of the railroad, without regard to the location of the head office of the railroad. . . ." O.C.G.A. § 48-5-520. Thus, there does not appear to be a comparable tax exemption in Georgia.

to the unit value of CSXT under each of the Department's valuation methods.[22]

E. *The Court's Conclusions Regarding the True Market Value of CSXT*

After parsing through days of expert testimony, the court concludes that the Department's DCF value as set out in its Proposed Valuation is the most accurate indicator of CSXT's unit value. As a result, the court holds that, for purposes of applying the 4-R Act to the defendants' assessments of CSXT, the true market unit value of CSXT for the tax year 2002 was $7,726,293,350.[23]

The court finds that the portion of CSXT's true market value that should be allocated to Georgia for the tax year 2002 is 7.194059%. The true market value of CSXT's taxable rail transportation property in Georgia for the tax year 2002, therefore, was $509,560,171.[24]

Determining the true market value of CSXT does not end the inquiry. CSXT is only entitled to relief if the "ratio of [its] assessed value to [its] true market value . . . exceeds by at least 5% the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. § 11501(c). The parties have stipulated that the ratio of assessed value to true market

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[22] Except for arguing that no adjustment is necessary, CSXT has offered no evidence as to what the amount of the adjustment should have been.

[23] The court arrived at this number by taking the Department's $8,126,293,350 DCF value for CSXT and subtracting $400 million to account for CSXT's intangible property.

[24] The court reached this number by taking the $7,726,293,350 true market unit value of CSXT and allocating 7.194059% to Georgia. The court then deducted $4,156,193 to account for CSXT's motor vehicles, $2,907,467 to account for pollution control, and $39,210,271 to account for W & A exempt line.

value for all other commercial and industrial property in Georgia is 40%. For CSXT to succeed against the defendants, therefore, the ratio of assessed value to true market value of CSXT's rail transportation property in each assessment jurisdiction must be at least 42%.[25]

Regardless of whether the assessment jurisdiction is the county or the state, the ratio of assessed market value to true market value for CSXT's rail transportation property is less than 42%. As a result, the court concludes that the defendants have not discriminated against CSXT in violation of 49 U.S.C. § 11501(b)(1).

IV. *Whether the Defendants Singled Out CSXT for Discriminatory Treatment by Applying a Higher Valuation Approach to CSXT's Property than the Valuation Approach Applied to Other Centrally-Assessed Taxpayers in Georgia for the Tax Year 2002 in Violation of 49 U.S.C. § 11501(b)(4)*

The provisions of 49 U.S.C. § 11501(b)(4) forbid the imposition of any tax that discriminates against a railroad. The United States Supreme Court has held that when railroads are singled out for discriminatory treatment, discrimination under 49 U.S.C. § 11501(b)(4) has occurred. *See Department of Revenue of Oregon v. ACF Industries, Inc.*, 510 U.S. 332, 346-47, 114 S.Ct. 843, 851, 127 L.Ed.2d 165 (1994).

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[25] Section 11501(c) states that relief may be granted under this section "only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5% the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." Once the 5% threshold is satisfied, the court is empowered to prevent all discrimination against the railroad. The 5% threshold is calculated by measuring 5% of 40%, which yields two percentage points. *See Southern Railway Co. v. State Board of Equalization*, 712 F.Supp. 1557, 1565-66 (N.D.Ga.1988).

CSXT claims that it has been singled out for discriminatory treatment because the Department did not attempt to assess the fair market value of other centrally-assessed taxpayers. Instead, CSXT claims that other centrally-assessed taxpayers are being taxed at whatever the Department determines is the lowest estimate of value that it could reasonably accept. CSXT argues that it is entitled to taxation on the same basis as these other centrally-assessed utilities-taxation based on the lowest possible value.

CSXT also argues that it has been treated differently than Norfolk Southern, the only other major railroad in Georgia. As evidence of this discrimination, CSXT points out that the Department consistently valued Norfolk Southern higher than CSXT, yet in the course of other litigation, the Department agreed to value Norfolk Southern at less than $8.2 billion for the tax year 2002.

A. *Whether CSXT Has Been Taxed Differently Than Other Centrally-Assessed Taxpayers*

CSXT first claims it has been singled out for discriminatory treatment because the Department's assessments of non-railroad centrally-assessed taxpayers are not based on the appraiser's opinion of the fair market value of those properties. In support of this claim, CSXT points out that Mr. Dickerson testified that he prepared proposed assessments for non-railroad utilities that represented the "lowest number he could come up with" and a "number at the lower end of his range of fair market value." Presumably because CSXT can come up with a lower number for its value than the Department, CSXT argues that it was treated differently than other centrally-assessed taxpayers.

The court finds CSXT' s [sic] argument unpersuasive. The evidence at trial showed that in preparing the Department's proposed valuations of CSXT and other taxpayers subject to the unit rule method, Mr. Dickerson first determined the

range within which he thought a particular company's fair market value could lie and then chose a number at the lower end of this range. CSXT was treated in the same manner as other public utilities; Mr. Dickerson came up with a range of values for CSXT and then picked a number that was closest to the lower end of that range. Further, the evidence at trial showed that Mr. Dickerson used essentially the same valuation methods to determine the unit value of all taxpayers subject to the unit rule method. The court finds Mr. Dickerson' s [sic] testimony on this issue to be credible.

Moreover, the fact that CSXT could come up with a lower number than the Department is meaningless. The Department did not base its valuation of other centrally-assessed taxpayers on the lowest number those taxpayers could come up with.[26] Instead, centrally-assessed taxpayers were taxed at the lowest number that Mr. Dickerson could come up with, just as CSXT was.

As further evidence that CSXT has been singled out for discriminatory treatment, CSXT argues that the Department's Proposed Valuation for 2002 is 47.1% higher than CSXT's 2001 assessment, whereas other non-railroad centrally-assessed taxpayers suffered only minimal increases. According to CSXT, this large increase was primarily caused by the exceedingly high terminal growth rate that Mr. Dickerson used in his DCF approach.

The fact that CSXT' s [sic] 2002 assessment was 47.1% higher than its 2001 assessment, and that this percentage increase is much higher than the percentage increase of other centrally-assessed taxpayers, does not in and of itself show that CSXT has been discriminated against. An equally likely proposition is that CSXT was undervalued in 2001. Further,

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[26] The court has no doubt that other centrally-assessed taxpayers could have come up with values lower than Mr. Dickerson' s proposed valuation of their property.

absent evidence of the fair market value of CSXT in 2001 or the fair market value of other taxpayers in 2002, the court cannot determine that CSXT has been singled out for discriminatory treatment.

Mr. Dickerson, moreover, testified that the largest part of the increase in CSXT's 2002 assessment was due to a change he instituted that year for all railroads, which was not needed for non-railroad public utilities. Specifically, he began using income data taken from CSX Corporation's annual reports instead of CSXT's R-1[27] reports to project future cash flows in his DCF analysis. Because those income figures can differ significantly from each other, the choice of which to use can greatly affect the DCF indicator of value. The evidence at trial showed that CSX Corporation's annual reports reflect management's view of CSXT's financial performance.

Finally, CSXT argues that the Department's treatment of other centrally-assessed taxpayers for the tax year 2004 is potent evidence that CSXT was singled out in 2002. In the tax year 2004, Mr. Dickerson devised a new way of calculating the risk premium for centrally-assessed taxpayers, which he then applied to his valuation worksheets for the tax year 2004. This new calculation increased the Department's initial valuation of the majority of centrally-assessed taxpayers, which, in turn, caused a "stir." The Department, in an attempt to avoid litigation, had a meeting with six representatives from centrally-assessed taxpayers, including CSXT. At the conclusion of the meeting, CSXT and the other five companies agreed that for the tax year 2004, all centrally-assessed taxpayers would receive an assessment equal to their assessment for the previous year or the average of their past three years of assessments, whichever was greater. For 2004, CSXT was assessed at $6.5 billion, a

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[27] An R-1 report is a report made by a railroad, such as CSXT, to the STB.

slight increase over the Department's 2001 assessment. Because the Department reverted to CSXT's 2001 values in 2004, CSXT argues that this is an indication that CSXT was singled out for different tax treatment in 2002 and 2003.

The Department's 2004 assessment of CSXT indicates little about the Department's 2002 valuation of CSXT. The Department negotiated an agreement with all public utilities in 2004 to avoid litigation. The agreement mandated that these taxpayers receive an assessment equal to their assessment for the previous year or the average of their past three years of assessments. As a practical matter, the Department could not have used either formula for CSXT because CSXT had filed suits challenging the Department's 2002 and 2003 valuations. The only avenue left to the Department was to revert to CSXT's 2001 assessment.

B. *Whether CSXT Has Been Treated Differently Than Norfolk Southern*

CSXT next argues that it has been treated differently than the only other major railroad in Georgia, Norfolk Southern. Like CSXT, Norfolk Southern filed suit against the defendants challenging the Department's 2002 assessment. The Department, however, settled Norfolk Southern's lawsuit and agreed to only minimal increases in value over the Department's 2001 assessment of Norfolk Southern. Ultimately, this meant that Norfolk Southern's 2002 value in Georgia was less than $8.2 billion.

CSXT argues that valuing Norfolk Southern less than CSXT for the tax year 2002 is wrong and discriminatory. CSXT points out that the Department consistently valued Norfolk Southern higher than CSXT for the tax years 2002-2004 and consistently projected higher cash flows for Norfolk Southern. If the Department truly believed that Norfolk Southern was worth more than CSXT, how, asks CSXT, could the Department assert in this suit that CSXT' s [sic]

value is higher than the agreed-to value of Norfolk Southern for the tax year 2002?

The court finds CSXT' s arguments unpersuasive. Nothing in the 4-R Act requires the court to compare the treatment of CSXT to just one company, another railroad. In *Atchison, Topeka, and Santa Fe Railway,* 78 F.3d at 442, the railroad argued that the court could measure whether Arizona's tax statutes discriminated against it solely by looking at the treatment of other motor carriers, as opposed to comparing all commercial and industrial taxpayers. The Ninth Circuit rejected this argument stating, "Although subsection(b)(4) is silent as to the proper comparison class, congressional intent behind the 4-R Act dictates that the comparison class of 'other commercial and industrial taxpayers subject to the tax' be used." *Id.*

The court finds the logic of the Ninth Circuit persuasive. By narrowing the comparison class to just one company, CSXT attempts to greatly expand the reach of the 4-R Act and increase the likelihood of future litigation. Accordingly, the court finds that it is improper to compare CSXT's treatment to just one other company, Norfolk Southern, for purposes of determining whether CSXT has been discriminated against in violation of the 4-R Act.

Even if it was proper to compare solely CSXT and Norfolk Southern, the court still finds that CSXT has not been singled out for discriminatory treatment. CSXT did not present any evidence that it was treated differently than Norfolk Southern when the Department made its initial proposed valuation of Norfolk Southern. If anything, the fact that Norfolk Southern also filed suit challenging the Department's proposed valuation suggests that Norfolk Southern was treated similarly to CSXT.

In addition, the fact that the Department ultimately settled with Norfolk Southern does not compel the court to conclude

that CSXT was treated differently from Norfolk Southern. Lawsuits are settled for numerous reasons, including the need to allocate scarce legal resources differently.

V. *Whether the Department Improperly Included the Value of CSXT's Intangible Property in Its Proposed Valuation in Violation of 49 U.S.C. § 11501(b)(4)*

CSXT's last claim is that the Department's Proposed Valuation includes amounts attributable to intangible property that is not taxed to locally-assessed taxpayers, resulting in a violation of 49 U.S.C. § 11501(b)(4). When a railroad is valued as a unit on a going concern basis, it is undisputed that the unit value of that railroad necessarily includes all of the railroad's assets, both tangible and intangible. The trend in a majority of states, however, is to exclude intangible property from ad valorem taxation. In 1996, the state of Georgia followed this trend and repealed its ad valorem tax on intangible property. *See* O.C.G.A. § 48-6-21. Thus, the intangible property of CSXT is not taxable in Georgia.

As an initial matter, the court must address the definition of the term "intangible property." Intangible property is generally defined as property that lacks a physical existence, such as stock options and business goodwill. *Black's Law Dictionary* 1253 (8th ed.2004). The court is not aware of any decision by the Georgia Department of Revenue or by Georgia courts that articulates a list of property included within the definition of "intangible property" for purposes of tax valuation. Under the repealed Georgia statute subjecting intangible property to an ad valorem tax, the Georgia legislature defined intangible property as:

(1) Money;

(2) Collateral Security Loans;

(3) Stocks;

(4) Accounts receivables and notes not representing credits secured by real estate;

(5) Bonds and debentures of all corporations;

(6) Long term notes secured by real estate;

(7) Short term notes secured by real estate;

(8) Restricted foreign intangibles;

(9) Patents, copyrights, franchises, and all other classes of intangible personal property not otherwise enumerated; and

(10) Computer software defined by statute.

O.C.G.A. § 48-6-21.

Although it has been repealed, O.C.G.A. § 48-6-21 is an indication that the Georgia legislature believed that the assets listed above constitute intangible property. Further, by repealing the statute, the legislature implicitly indicated that these types of intangible property were no longer subject to taxation. The court, therefore, finds that, at the very least, the list of property included in O.C.G.A. § 48-6-21 is a good starting point for defining the term "intangible property."

Despite the repeal of O.C.G.A. § 48-6-21, CSXT claims that its intangible property has been included within the Department's Proposed Valuation. The Department admits that its unit valuation of CSXT initially included CSXT' s [sic] tangible and intangible property, but claims that it deducted $400 million from its unit value to account for CSXT's intangible property.

Instead of attempting to identify and value its intangible property, CSXT contends that it is impractical to identify and value its intangible property, and, thus, the court should require the Department to use the yield capitalization approach, which CSXT contends does not compound intangibles. CSXT claims that the court should require the

defendants to use the yield capitalization approach because the Department's market multiple and stock and debt approaches allegedly unnecessarily compound intangible values.[28] For example, CSXT has presented evidence that a company's stock prices may increase when that company hires a new CEO. This increase in the stock price is not attributable to tangible assets. Because the stock and debt and the market multiple approaches both rely on a company's stock price,[29] they compound intangible assets.

As support for its argument that the court should adopt the yield capitalization approach, CSXT cites to a decision by the Utah Tax Commission ("Commission") in *WilTel, Inc. v. Beaver County*, Nos. 95-0789 and 95-0824 (Utah Tax Commission December 5,, 1997)("*WilTel II*"). WilTel, Inc. is a provider of long-distance telecommunications services. In 1995, the Utah State Property Tax Division (the "Division") calculated WilTel's unit value based on the stock and debt and income approaches. WilTel appealed the assessment to the Utah Tax Commission and moved for partial summary judgment arguing, in part, that Utah's assessment improperly included intangible property, which was not taxable under Utah law. *WilTel, Inc. v. Beaver County*, No. 95-0789, 1997 Utah Tax LEXIS 111, at *2-3 (Utah Tax Commission April 21, 1997) (*"WilTel I"*). The Utah Tax Commission found that the income and stock and debt approaches tend to compound intangible values. The Utah Tax Commission then remanded the case to the parties to identify, value, and re-

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[28] It is undisputed here that the Department does not and did not intend to value the intangible property of other commercial and industrial property. It is also undisputed that all three of the valuation methods used by the Department initially included the value of CSXT's intangible property.

[29] For clarification purposes, unlike the stock and debt approach, the market multiple approach relies on the stock prices of comparable companies, as opposed to CSX Corporation's stock prices.

move WilTel's intangible property using the cost approach." *Id.* at *14-15.

On remand, the parties were unable to agree on the valuation of WilTel's tax-exempt intangible property, and, thus, the matter came before the Utah Tax Commission again for a formal hearing to determine the value of WilTel's intangible property. *WilTel II* at *2. The Commission finally concluded that "separately valuing intangibles and deducting them from a unit valuation is impractical." *WilTel II* at *3. In an attempt to minimize the inclusion of intangibles in the unit rule method, the Utah Tax Commission concluded that the parties should use a yield capitalization approach and a cost approach and that each approach should be weighted at 50%. The Utah Tax Commission then remanded the case to the Division to calculate the value of WilTel under a yield capitalization approach (minus growth) and to time adjust its cost approach. *WilTel II* at *6.

While the *WilTel II* decision is attractive because of its simplicity, the court finds that the reasoning of *WilTel II* is not appropriate in this case. First, this is a case brought under the 4-R Act, and not merely an appeal of a state tax valuation. The court has already held that CSXT may not challenge the Department's valuation methods in this case. If this court were to adopt the reasoning of *WilTel II*, the court would be dictating to the Department a particular valuation method.

Second, CSXT has not convinced the court that it is impossible or impractical to value its intangible property. While CSXT's local assessment expert, Ms. Judith Ross, testified that identifying and valuing a company's intangible property would be extremely difficult, she also testified that performing a unit valuation in general is difficult. Ms. Ross further testified that intangible property can be identified and valued by a person with expertise. Thus, the court finds that it is not impractical or impossible to identify and value CSXT's intangible property.

Third, while the court believes that the stock and debt approach undoubtedly includes value attributable to intangible property in its initial unit value, the court also finds that the yield capitalization method touted by CSXT includes some value attributable to intangible property. In fact, CSXT has admitted that Mr. Tegarden's yield capitalization value includes some value attributable to intangible property. This is further illustrated by the fact that CSXT deducts $400 million from Mr. Tegarden' s unit value of CSXT—the same $400 million deduction that the Department took to account for certain intangibles owned by CSXT.

Fourth, this case differs[30] from the *Wiltel* decisions in that in *Wiltel I,* the Utah Tax Commission remanded the case so that the taxpayer could identify its intangible property. The parties, however, could not agree on the value of Wiltel's intangible property. In this case, CSXT has not even presented any evidence that it owns intangible property.

Here, it is undisputed that Mr. Dickerson deducted $400 million from his unit value of CSXT to account for certain intangibles. He testified that the $400 million deduction was his attempt to eliminate the value of CSXT's intangible property that was previously separately taxed under O.C.G.A. § 48-6-21. When asked why he did not attempt to value and deduct other intangible property from his initial assessment, Mr. Dickerson testified that CSXT did not present the Department with any evidence that CSXT owned other intangible property. Consistent with its statement to Mr. Dickerson, at trial CSXT failed to identify any specific intangible property that it owned as of January 1, 2002.[31] CSXT also failed to

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[30] The court also notes that holdings in the *WilTel* cases are not binding upon this court for numerous reasons: (1) the *Wiltel* decisions were made by the Utah State Tax Commission; (2) the taxpayer in the *Wiltel* cases was a telecommunications company, not a railroad; and (3) the *Wiltel* cases were not decided under the 4-R Act.

[31] For example, CSXT did not provide the court with any evidence that

present evidence as to how much its intangible property was worth. *Cf. Burlington N. R.R. Co. v. Huddleston*, 94 F.3d 1413, 1415 (10th Cir.1996) (in its complaint alleging a violation of the 4-R Act, the railroad also alleged that the value of its intangible property, computer software, was at least $8 million); *Bair*, 815 F.Supp. at 1239 (separately identifying and valuing intangible property of a railroad for purposes of 4-R Act claim). Nor has CSXT provided the court with any evidence that the Department's $400 million intangible property deduction was under-inclusive.

The court, therefore, concludes that CSXT has not carried its burden of showing by a preponderance of evidence that the Department improperly included intangible property in the Department's Proposed Valuation of CSXT.

*Conclusion*

For the reasons discussed above, the court concludes that the defendants have not discriminated against CSXT in violation of 49 U.S.C. § 11501(b)(4).

The court also holds that the true market unit value of CSXT for the tax year 2002 was $7,726,293,350.[32] The true market value of CSXT's taxable rail transportation property in Georgia for the tax year 2002 was $509,560,171.[33] The defendants, therefore, have not discriminated against CSXT in violation of 49 U.S.C. § 11501(b)(1) because the ratio of assessed value to true market value of CSXT's property does

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it owns any trademarks, copyrights, or patents.

[32] The court arrived at this number by taking the Department's $8,126,293,350 DCF value for CSXT and subtracting $400 million to account for CSXT's intangible property.

[33] The court reached this number by taking the $7,726,293,350 true market unit value of CSXT and allocating 7.194059% to Georgia. The court then deducted $4,156,193 to account for CSXT's motor vehicles, $2,907,467 to account for pollution control, and $39,210,271 to account for W & A exempt line.

not exceed the jurisdictional threshold set out in the 4-R Act of 42%. Thus, CSXT is not entitled to relief under the 4-R Act for the tax year 2002.

The clerk is DIRECTED to close this file and issue judgment for the defendants in accordance with this order.

**APPENDIX C**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

[Filed FEB 12, 2007]

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No. 05-16000-CC

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CSX TRANSPORTATION, INC.,
*Plaintiff-Appellant,*

versus

STATE BOARD OF EQUALIZATION, of the State of Georgia, JERRY JACKSON, as Commissioner of Revenue of the State of Georgia, RUSSELL W. HINTON, as State Auditor of the State of Georgia, RAY J. CRAWFORD, as Director of the Georgia State Properties Commission,
*Defendants-Appellees.*

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On Appeal from the United States District Court
for the Northern District of Georgia

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ON PETITION(S) FOR REHEARING AND PETITION(S)
FOR REHEARING EN BANC

Before: BIRCH, PRYOR and FAY, *Circuit Judges.*

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ [Illegible]
UNITED STATES CIRCUIT JUDGE

# APPENDIX D

## FEDERAL STATUTE

**49 U.S.C. § 11501 (2002) Tax discrimination against rail transportation propery**

(a) In this section—

(1) the term "assessment" means valuation for a property tax levied by a taxing district;

(2) the term "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

(3) the term "rail transportation property" means property, as defined by the Board, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Board under this part; and

(4) the term "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ratio rate applicable to taxable property in the taxing district.